

# THE LAW OF RECEIVERS.





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# THE LAW OF RECEIVERS

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## PREFACE.

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Sometime ago we published a small book on the Law of Benami Transactions in British India in the Lawyer's Companion Series; and the generous reception which the learned public was pleased to give it has encouraged us to take up the treatment of some of the other portions of our uncoded law in this series.

We have now chosen the Law of Receivers in British India for treatment on a plan similar to that of our "Law of Benami Transactions." Strictly speaking, the subject of Receivers cannot be said to be an absolutely uncoded law. There are certain sections in the Code of Civil Procedure, the Code of Criminal Procedure and other special and local Acts which lay down certain general or special provisions on the subject. But these are so few and so isolated that they can scarcely be said to cover the whole body of the law of Receivership. Questions have often arisen in our Courts which had to be decided on the analogy of foreign case-law, and in accordance with principles of justice and equity. Our Courts have often been obliged to assume jurisdiction which are not expressly conferred by the express wording of, or necessary implication from, the provisions of our Legislative enactments.\*

The subject is one of great importance, and plays a prominent part in modern methods of judicial procedure. As time advances, the technicalities of the older law give way to broader and more equitable principles. The provisions of the older Code of Civil Procedure which empowered the Courts to appoint receivers only when it was found necessary "for the realization, preservation, or better custody or management of any property, moveable or immoveable, the subject of a suit or under attachment," is now repealed, and a broader rule is enacted in the present Code giving the Courts power to make the appointment whenever it deems it "just and convenient."

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\* See the observations of the Madras High Court in *Subramania Iyer v. Muthulakshmi Ammal*, M.W.N., 1912, 1208=17 Ind. Cas. 583.

Again, the framers of the present Code of Civil Procedure have thought it fit to remove the restraint imposed on the subordinate Courts by the older Codes regarding the power of directly appointing receivers in suits pending in such Courts, in view of the fact that the latter Courts have now attained a sufficient standard of efficiency to be entrusted with the direct power of appointing receivers.\*

Thus, the new Code has made two important changes regarding the power of Courts to appoint receivers. In the first place, it has enlarged the jurisdiction of the Courts by giving the power of appointment in all cases in which the Court may deem it fit, instead of specifying the particular cases in which it can be made. In the second place, it has also given such powers of appointment to Courts which formerly had not the direct power to appoint.†

Administration of justice by appointment of receivers, as it obtains at present in our Courts, is an introduction of the British Courts and of the British Indian Legislature. From the earliest times the procedure adopted was more or less the same as that which governed Courts in England. Further, our law on the subject is yet in its infancy, and several of the complicated cases connected with this subject have not yet come before our Courts for decision. When they do come up in future, it would be of some use for those that are concerned in the administration of justice in the country to know how similar questions were decided in those Courts where the law had been in operation for a longer period and which was, as it were, the parent stem from which the infant plant was grafted on Indian Law. Hence, it has been found necessary to make constant reference in the course of this work to English and American case-law and text books.‡

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\* See Statement of Objects and Reasons and Report of Select Committee.

† See S. 503 of the Code of Civil Procedure, 1882, and compare it with O. XL, r. 1 of the present Act, V of 1908.

‡ Sir J. F. Stephen, a former law member of the Viceroy's Council, in his speech on the Native Marriage Bill, observed that "The best measure of justice, equity and good conscience with which I am acquainted and the one which is always resorted to by Indian Courts is to be found in those parts of the decisions of the English Courts, and they are very numerous, which deal not with technicalities peculiar to English Law and to English Courts, but with broad and general principles founded on human nature itself and recognised with various degrees of distinctness by all or nearly all civilised nations." See Gazette of India, 27th January, 1872, cited in Rattigan's Juris., 3rd Ed., p. 75, *f.n.* 2.

With regard to the statement of the principles of English and American law, we have referred, among others, to the following standard works and digests, to the authors and publishers of which we beg to express our heartfelt gratitude. The following may be mentioned as the more important among those consulted by us in the compilation of this book, *viz.*, Kerr on Receivers, Kerr on Injunctions, Story's Equity Jurisprudence, Daniel's Chancery Practice, High on Receivers, Alderson on Receivers, Beach on Receivers, Reviere on Receivers, Halsbury's Laws of England, Encyclopædia of the Laws of England, Mew's Digest, the Annual Practice and the Yearly Practice. We also acknowledge our indebtedness to the excellent work of Justice Woodroffe on the Law of Receivers. With reference to those chapters wherein the Law of Receivers is treated in its relation to particular branches of other law, such as Mortgage, Partnership, Insolvency, Infants' Estates, Lunatics, etc., particular treatises dealing with those subjects have also been referred to. For instance, in the chapter on "Receivers in Partnership Suits" Lindley on Partnership has been referred to. In the chapter on "Receivers of Infants' Estates" Simpson on Infants has been referred to, and Archbald on Lunacy has been referred to in the chapter on "Receivers of Lunatics' Estates."

It will be observed that several Appendices have been added. The first collects the several provisions of our legislature—Imperial and Local—regarding the subject of Receivers. Appendix II comprises such of the rules and orders made by the judicial or executive authority regulating the procedure of Courts in the matter of applications for the appointment of Receivers. The last Appendix collects together the forms pertaining to the subject regarding the order of appointment of receiver, the form of his bond, the form of surety's bond and other forms relating to this branch of the law.

The case-law has been brought down to the latest date of the publication. Care has been taken to incorporate all important Indian cases relating to the subject. Foreign case-law has been resorted to only where the Indian Law is silent on the point or when it is of such great importance as would justify its citation. An exhaustive

subject-index and two tables of cases have been furnished to facilitate ready reference.

We venture to hope that this book will be found useful by the learned profession.

THE LAWYER'S COMPANION OFFICE,  
TRICHINOPOLY.  
*Dated 22nd October, 1915.*

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# THE LAW OF RECEIVERS IN BRITISH INDIA.

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## CHAPTER I. INTRODUCTORY.

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ONE of the most important functions of the laws of procedure is the protection of legal rights.<sup>1</sup> “The purpose of Laws

**Remedy by appointment of Receiver—Nature of.**

of Procedure is in fact to give reality and efficiency to rights and to secure the performance of duties.”<sup>2</sup>

There are two ways in which Laws of Procedure best serve their purpose,—one when the right has already been invaded and the wrong perpetrated, and the other when the right is only threatened to be invaded

**Appointment of Receiver belongs to the class of preventive reliefs.**

and the wrong likely to be done in the future. In the first case the remedy adopted is by way of compensation or restoration, in the second case the remedy adopted is by way of prevention or precaution. The

remedy by way of appointment of receiver belongs to the branch of preventive or precautionary remedy. It seeks to prevent a meditated wrong more often than to redress an injury actually done.<sup>3</sup>

(1) The main object of all civil law is the establishment and maintenance of the rights severally due to the different members of the community. See Stephen's Commentaries, 12th Ed., 1895, Vol. III, Book V, Chap. I, p. 264.

(2) Amos' Science of Jurisprudence, 1872, p. 318.

(3) The remedy by appointment of receiver is generally intended to accomplish the ends of precautionary justice. “It is ordinarily applied to prevent wrongs or anticipated mischiefs, and not merely to redress them when done. The party seeks the aid of a Court, because he fears some future probable injury to his rights or interests, and not because an injury has already occurred, which requires any compensation or other relief.” Story's Equity Jurisprudence, 8th Ed., 1861, Ch. XXI, S. 826, p. 35. “The object in all such cases is to secure the preservation of the property to its appropriate uses and ends; and wherever there is danger of its being converted to other purposes, or diminished or lost by gross negligence, the interference of the Court becomes indispensable. Thus, where property in the hands of a trustee for certain specified uses or trusts (express or implied) is in danger of being diverted or squandered to the injury of any claimant having a present or future fixed title thereto, the administration will be duly secured in the manner deemed best fitted to the end, as by the appointment of a receiver or otherwise.” *Ibid*, S. 827.

Regarding the necessity of this preventive jurisdiction of Courts, Spelling observes, “Without the power to prevent as well as to undo wrongs, to restrain as well as to compel action, to preserve as well as to reinstate the status of persons and things, Courts of equity would possess but little power, and command but little respect as dispensers of justice and arbiters between man and man. The important restraining function is given effect to by the great extraordinary remedy of injunction (and of appointment of receiver) which may be appropriately termed the strong arm of Courts of equity.” Spelling on Injunctions, 3.

In such cases the party seeks the aid of the Court, because he fears some future probable injury to his rights or interests, and not because an injury has already occurred which requires compensation or other relief.<sup>4</sup> The nature of the relief given is dependent on circumstances. Sometimes Courts interfere by the appointment of a receiver, sometimes by an order to pay a pecuniary fund into court, sometimes by directing security to be given or money to be paid over,<sup>5</sup> or a sufficient indemnity to be given, and sometimes by the mere issuing of an injunction,<sup>6</sup> or other remedial process, thus adapting their relief to the precise nature of the particular case and the remedial justice required by it. All these remedies are in the nature of preventive relief.<sup>7</sup> Such relief will not generally be granted unless the party seeking it is able to prove imminent danger of a substantial kind, or that the apprehended injury, if it does come, will be irreparable<sup>8</sup>; and in general the action at the present day is not exclusively for such preventive relief, but seeks other substantive relief, the preventive or precautionary relief being merely incidental to such other substantive relief.<sup>9</sup>

This remedy by way of appointment of receiver belongs in one sense to the class of what are called "Extraordinary Remedies"<sup>10</sup>. As a general rule, relief is granted, by a court of law to an aggrieved party only after a laborious trial of questions of fact and a complete investigation into questions of law. But, there are in most legal systems certain more expeditious and simple modes of obtaining relief from threatened or actual injuries, than by a complete trial of a formal action. The Judge in such cases makes a provisional order, sometimes on an one-sided application by one party, commanding the other party to do or to abstain from doing certain definite acts on peril of instant punishment. The appointment of receiver, and the granting of a temporary injunction belong to this class of extraordinary remedies.<sup>11</sup>

It belongs to the class of extraordinary remedies.

(4) *Hobbs v. Wayet*, 36 Ch. Div. 256.

(5) *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(6) See *Haines v. Taylor*, 2 Phil. 210; *Hendriks v. Montagu*, 17 Ch. Div. 638; *Houghes Hallett v. Indian Mammoth Gold Mines Co.*, 22 Ch. Div. 561; *Hobbs v. Wayet*, 22 Ch. Div. 561; see, also, *Chandidat v. Padmanand*, 22 C. 459.

(7) See Chapter on "Practice and Procedure," *infra*.

(8) *Fletcher v. Bealey*, 28 Ch. Div. 688, citing *Ripon v. Hobart*, My. & K. 169.

(9) *Snell's Equity*, 9th Ed., p. 725.

(10) See *Amos' Science of Jurisprudence*, 1872, p. 342; see, also, *Banerjee's Specific Relief*, Tagore Law Lectures, 1906, p. 686.

(11) The grant of an application for appointment of receiver is, in one sense, an exception to the rule that no suit will generally lie for redress without an actual wrong being perpetrated. "It is a general rule that courts of law will not move unless some duty or obligation

The appointment of receivers was originally made in England by the Court of Chancery for the advancement of justice in cases where the remedy to be obtained in the Courts of ordinary jurisdiction was inadequate for purposes of substantial justice.<sup>12</sup>

Sometimes, it so happens, that the regular trial of an action at law takes a long time to end in a decree. In the meantime, it may happen that the property which is the subject of the dispute may be destroyed or deteriorated, or the profits thereof unrecovered or recovered by a party not really entitled thereto, or the property may so suffer by want of management or mismanagement that, when the Court declares in the end that a certain person is rightfully entitled to such property and the profits thereof, he may find the property or the income thereof not existing

is broken. Very often parties assert rights which they do not as yet wish to exercise, or repudiate obligations which they are not at the moment called upon to perform. And so disputes arise without any wrong having actually taken place; and very often parties are desirous, from reasons of convenience, to come into court and get their rights declared at once without waiting for the expected breach. No doubt there may be strong reasons of convenience in favour of such a course. The intention to do an act would, in a vast majority of cases, be abandoned, if it was known to be illegal; or, what comes to the same thing, if it was known that a court of law would treat it as illegal. The consideration which counterbalances these reasons of convenience is the fear that too much opportunity might be given to persons of litigious character to bring useless and vexatious suits against their neighbours, and thus the number of suits would be greatly multiplied. And since the burden and expense of litigation always fall to some extent on the public at large, this burden and expense cannot be increased solely with reference to considerations of private convenience. The rule, therefore, is generally adhered to, that there must be some actual wrong done before the court will set itself in motion. Exceptions are, however, generally made in some cases where there is a reasonable and well-grounded expectation that a breach of duty or obligation will be committed, and that no proper redress can be had, if it does take place." The appointment of a receiver belongs to the class of such exceptions. Markby's Elements of Law, 5th Ed., Ch. XX, S. 852, pp. 422, 423.

(12) *Per Gifford, L.J.*, in *Hopkins v. Worcester*, L.R. 6 Eq. 447.

A great master of equity, the late Lord Redesdale, has left the following comprehensive and luminous illustration of English system of equity. The passage in question will be found in Mr. Samuel Warren's Abridgment of Blackstone's Commentaries, p. 68. "Early in the history of our jurisprudence, the administration of justice by the ordinary courts appears to have been incomplete. To supply the defect, the courts of equity have gained an establishment, assuming the power of enforcing the principles, upon which the ordinary courts also decide, when the powers of those courts, or their modes of proceeding are insufficient for the purpose of preventing those principles, when enforced by the ordinary courts, from becoming, contrary to the purpose of their original establishment, instruments of injustice; and of deciding on principles of universal justice where the interference of a court of judicature is necessary to prevent a wrong, *and the positive law is silent*. The courts of equity also minister to the ends of justice, by removing impediments to the fair decision of a question in other courts; *by providing for the safety of property in dispute, pending litigation; by restraining the assertion of doubtful rights in a manner productive of irreparable damage*; by preventing injury to a third person from the doubtful title of others, etc." In India the early Supreme Courts, in appointing receivers, closely followed the practice of the Chancery courts in England. See Charter of the Supreme Court, dated 26th March, 1774, cl. (18) given in Smout's and Ryan's Rules and Orders, Vol. I.

at all, or existing in such spoilt condition that it would not be valuable to him to such an extent as it would have been if the same had remained under his management or the management of some other proper person during the period of trial. The circumstances of the case may also be such that the injured party may not be in a position to obtain compensation from the wrong-doer. In such cases, the Court, if it deems it "just and convenient," appoints a person to collect and receive, pending the proceedings, the rents and profits or other income of the property in dispute.<sup>13</sup>

There are other cases, when, owing to the incompetency of the person entitled to the property, it is in danger of being wasted or destroyed or deteriorated by those to whom it is by law entrusted, or by persons who have an immediate but partial interest therein.<sup>14</sup>

In such cases also, the Court appoints a person to collect the rents and profits, or to otherwise manage the property.

Such a person is called a "Receiver."

Hence, a Receiver in an action may be defined to be "an impartial person appointed by the court to collect and receive, pending the proceedings, the rents, issues and profits of land, or the produce of personal estate or other things in question, which it does not seem reasonable to the court that either party should collect or receive, or where a party is incompetent to do so, as in the case of an infant. A receiver can only be properly granted for the purpose of getting in and holding or securing funds or other property, which the court at the trial, or in the course of the action, will have the means of distributing amongst, or making over to, the persons or person entitled thereto."<sup>15</sup>

**Term Receiver defined.**

(13) *Tullett v. Armstrong*, 1 Keen 428; *Owen v. Homan*, 4 H.L.C. 1032.

(14) Mitf. Pl. 133; the case of trustees and Hindu widows and life-tenants may be cited as examples.

(15) *Evans v. Coventry*, 3 Drew. 80; *Wright v. Vernon*, 3 Drew. 121. See, also, Kerr on Receivers, 6th Ed., 1912, Ch. I, pp. 3, 4.

The following definitions of the term "Receiver" and other connected terms have been collected from standard text books and lexicons for the purpose of completeness of reference :—

A Receiver has been defined as follows : "A receiver is an indifferent person between the parties, appointed by the Court to receive the rents, issues or profits of land or other thing in question in the Court, pending the suit, where it does not seem reasonable to the Court that either party should do it; and he is to account for such his receipt when the Court shall require him. And to secure his doing so, he is commonly ordered to enter into a recognizance with sureties in such a sum as the Court directs." *Viner's Abridgment* (1793), Vol. 18, p. 160. See, also, *Riviere on Receivers and Managers*, 1912, p. 1.

"A Receiver is an indifferent person between the parties to a cause, appointed by the Court to receive and preserve the property or fund in litigation *pendente lite*, when it does

**Nature of Office  
of Receiver—Officer  
of Court.**

The receiver so appointed is not the agent or representative of either party to the suit. He is uniformly regarded as an officer of the court. He has been rightly defined to be "the executive end" of a court of equity. His

not seem reasonable to the Court that either party should hold it." *Booth v. Clark*, 17 How. 322; *Waters v. Corroll*, 9 Yerg. 102; *Baker v. Administrator of Backus*, 32 Ill. 79; High on Receivers, S. 1, p. 2.

"A Receiver is an indifferent person between the parties to a cause appointed by the Court to receive and preserve the property or fund in litigation *pendente lite* when it does not seem reasonable to the Court that either party should hold it; or where a party is incompetent to do so as in the case of an infant." High on Receivers, S. 1; Kerr on Receivers, 3. **N.B.**—With regard to these definitions it must be noted that the Court sometimes appoints (not uncommonly in partnership cases) one of the parties to be receiver. Woodroffe on Receivers, 2nd Ed., 1910, p. 1, citing High on Receivers, S. 1; Kerr on Receivers, 3.

"A Receiver is an officer of the Court through whom equity takes possession of the property which is the subject of litigation, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes of them according to the rights and priorities of those entitled thereto whether regular parties in the cause or only coming before the Court in a reasonable time and in the due course of procedure to assert and establish their claims." Gluck and Becker's Law of Receivers of Corporation, 2nd Ed., 1896, S. 1.

"A Receiver is an indifferent person, between the parties, appointed by the Court to receive the rents and profits of real estate, or to get in and collect personal estate, or other things in question, pending the suit, where it does not seem reasonable to the Court that either party should do so; or where a party is incompetent to do so: as in the case of an infant." Daniell's Chancery Practice, 7th Ed., Chap. XXVII, p. 1409; See, also, Stroud's Judicial Dictionary, Vol. III, pp. 1679, 1680.

"A Receiver is one to whom any thing is communicated by another; an officer of the Court of Chancery to collect rents, etc., pending a suit." See Wharton's Law Lexicon, 11th Ed., 1911, p. 711.

"A Receiver is a person appointed, usually by an order of a Court, to receive the rents and profits of property, where it is desirable that these should come into the hands of a responsible and impartial person, e.g., in actions for dissolution of partnership. If there is a business to be carried on meanwhile, the receiver may also be made *manager*. He is, when appointed by the Court, its officer, and is required, as a rule, to give security for the due performance of his duties. Morris' Law Lexicon, 1905, p. 300.

"Receiver (receptor) is a person appointed, usually by an order of a Court, to receive the rents and profits of property where it is desirable that these should come into the hands of a responsible and impartial person, e.g., in actions for dissolution of partnership, &c." Dictionary of Law Terms and Phrases by Desai Narotam, Bombay, 1904, p. 282.

"A Receiver means a person who receives rent or other income, paying ascertained outgoings; but he does not manage the property in the sense of buying and selling or anything of that kind..... The receiver merely takes the income and pays necessary outgoings; the Manager carries on the trade or business" (*per* Jessel, M.R. *Re Manchester and Milford, Ry.*) 49 L.J. Ch. 369; 14 Ch. D. 652, 653 cited in Stroud's Judicial Dictionary, Vol. III, pp. 1679, 1680.

"A Receiver, generally speaking, is one to whom anything is delivered by another. But the use of the word in reference to the subject of which we are to treat means a ministerial officer of a Court of Chancery, appointed as an impartial and indifferent person between the parties to a suit to take possession of and preserve, *pendente lite*, and for the benefit of the party ultimately entitled to it, the fund or property in litigation, when it does not seem equitable to the Court that either party should have possession or control of it." See Alderson on Receivers, 1905, pp. 2-4; Watt's Prac. Reg. 335.



appointment is made for the purpose of protecting and preserving, for the benefit of the persons ultimately entitled to it, the property over

Receiver (From Eng. *receive*, Fr. *receveur*, Pr. *recebiere*.) is "a person appointed, ordinarily by a Court of Chancery, to receive and hold in trust money or other property which is the subject of litigation pending the suit; a person appointed to take charge of the estate and effects of a corporation, and to do other acts necessary to winding up its affairs, in certain cases." Bouvier. Webster's Dictionary, p. 1095.

A Receiver is "an officer appointed to receive public money; a treasurer; especially (a) a person appointed by the Court of Chancery to receive the rents and profits of land or the produce or other property which is in dispute in a cause in that court; (b) a person appointed in suits concerning the estates of infants, against executors, and between partners in some business for the purpose of winding up the concern." Imperial Dictionary, Vol. III, p. 632.

A Receiver is either (1) an agent appointed out of court by individuals or Corporations for the collection or protection of property, or (2) an officer of the Court appointed by the Court for a similar purpose. Receivers appointed out of Court have such powers, duties, and liabilities, as are defined by the instrument or statute under which they are appointed and by the general law of agency (*Ford v. Rackham*, (1853) 17 Beav. 485). The most familiar instances of Receivers appointed out of Court are in the cases of mortgages and debentures. Debentures or the covering trust deeds usually give an express power to appoint a receiver of the property comprised in the security in certain specified events; but, in the case of mortgages, such a power is usually omitted in reliance on the statutory provisions (See Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), Ss 19 (3), 24; see, also, Indian Act (XXVIII of 1866) which empower a mortgagee by deed, in certain events, to appoint a receiver of the mortgaged property with certain specified powers and duties. For the Indian Law on the subject see S. 6 and Ss. 12 to 19, Act XXVIII of 1866 (Trustees' and Mortgagees' Powers Act). These statutory provisions with regard to receivers can, however, be varied, or added to, or wholly excluded, by agreement between the mortgagor and mortgagee either in the mortgage itself or in a separate deed. See Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), S. 19 (1), (2), (3); *Re Della Rocella's Estate*, (1892) 29 L.R. Ir. 464; see, also, the provisions of the Trustees' and Mortgagees' Powers Act. See Halsbury's Laws of England, Vol. XXIV, 1912, Ss. 619, 620, p. 337. As to the appointment of receiver out of Court see S. 118 of Act VII of 1913, Companies.

#### TERM RECEIVER ANNEXED WITH OTHER WORDS:—

For the distinction between a passive receiver who merely holds the possession of the property and an active receiver to whom is confided the management of a going business concern, see *State Bank v. Domestic S. M. & Co.*, 99 Va. 411 (Amer.). The powers of the latter are necessarily very much greater than those of the former (*Ibid.*).

Receivers may be appointed both *pendente lite* and upon final hearing. But greater discretion is allowed to a court in the appointment of a receiver *pendente lite* than of a receiver upon final hearing. In the former case probable cause will suffice for an appointment, whereas in the latter sufficient proof would be required. See *Clark v. The Walter, T. Bradley, etc.*, 6 App. D.C. 437; Alderson on Receivers, 1905, p. 4.

These are persons appointed in a subsequent suit affecting the property of the same defendant, but instituted and pending in another Court. Such persons are generally appointed to assist the court in which the first suit was instituted, in administering justice to the several litigants. In the case of *Stockton v. Reynolds*, 140 U. S. 254, Justice Brewer has defined this term as meaning the same person appointed as receiver in another court. But there are several cases where different persons are appointed to perform the duties of such receiver. See Alderson on Receivers, 1905, p. 5; see, also, chapter on "Jurisdiction to appoint."

(ii) Receiver appointed in Court and Receiver appointed out of Court.

(iii) Active and Passive Receivers.

(iv) Receiver *pendente lite* and receiver appointed upon final hearing.

(v) Ancillary or auxiliary receiver.

which the court has found it necessary to extend its care. He exercises his functions in the interests of neither plaintiff nor defendant ; but for the

“ The term ‘ friendly receiver ’ is most frequently used to designate a receiver of a corporation, who was one of its officers ; but the words include every receiver who, by reason of being an officer or stockholder of a corporation, or because of some connection with and interest in the property and affairs of the defendant, whether a corporation or an individual, is to be presumed to be without that impartiality and indifference necessary to a strictly equitable and just administration of the powers and duties of the office and subservient to the interests, wishes and direction of the defendant. And this though his integrity be perfect and conceded.” See Alderson on Receivers, 1905, pp. 5, 6 ; Judgment of Jenkins, C. J. in *Fanner's Loan and Trust Co. v. Northern Pacific, etc.*, cited in (*Ibid.*).

The official receiver is also an officer of the Court, and in this capacity—acting as the hand of the Court—he takes possession, on the making of a receiving order, of all the debtor's assets. Official receivers are appointed in this country under the provisions of the Provincial Insolvency Act, III of 1907. In England the official receiver occupies a two-fold position—has a double *persona*. Beyond being an officer of the court, as above stated, he is also an officer of the Board of Trade, and as such accountable to it for funds received by him, and for the performance of his duties generally. The duties of the official receiver in England are twofold—they have relation (1) to the conduct of the debtor, and (2) to the administration of his estate. As regards the debtor, it is his (the official receiver's) duty to investigate the conduct of the debtor, and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under the Debtors Act, or the Bankruptcy Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge ; to report also concerning the debtor's conduct, as the Board of Trade may direct, and to take part in the public examination of the debtor. The official receiver in this country also has somewhat similar powers. But the duties of this officer in England and in India are not entirely the same.

As regards the estate of the debtor, the duty of the official receiver in England is to act as interim receiver of the debtor's estate pending the appointment of a trustee, and, where a special manager is not appointed, as manager thereof ; to advertise the receiving order, the date of the creditor's first meeting and of the debtor's public examination ; to preside at the first meeting of creditors ; and to issue forms of proxy for use at the meetings of creditors ; and to act as trustee during any vacancy in the office of trustee. The official receiver is, in a word, a provisional trustee but his position is more that of receiver than trustee. He is not to incur any expense beyond such as is required for the protection of the debtor's property or of disposing of perishable goods. If it is necessary to raise money to redeem property of the debtor, to prevent its being sacrificed by a sale, he should get the sanction of the Board of Trade or of the Court ; and not act on his own judgment. As far as practicable, he is to consult the wishes of the creditors as to the management of the property and may summon a meeting for that purpose ; Encyclopædia of the Laws of England, 2nd Ed., Vol. II, Heading “ Bankruptcy ” pp. 20, 21 ; Official Receivers are appointed by the Local Governments in this country under S. 19 of the Provincial Insolvency Act, III of 1907. As to the status of Official Receiver, see 5 L.B.R. 213 (F.B.).

“(viii) Receiver of rents. “ Receiver of rents ” signifies an officer belonging to the King or other personage. Crompt. Jurid. 18 ; Law Dictionary by Sir Thomas Edlyne Tomlins, Knt., London, 1820, Vol. II, Heading “ Receiver.”

“ Receiver of fines is an officer who received the money of all such as compounded with the Crown on original writs issued out of Chancery.” See Imperial Dictionary, Vol. III, p. 632 ; West, Symb. Par. 2, S. 106 ; St. 1, Ed. 4, C. 1 ; Law Dictionary, by Sir Thomas E. Tomlins, Knt. London, 1820, Vol. II.

common benefit of all the parties in interest.<sup>16</sup> He should be a person wholly impartial and indifferent to all parties in interest.<sup>17</sup> The appointment is made for the benefit and on behalf of all the parties to the suit, and not for the benefit of any particular party thereto.<sup>18</sup> Being an officer of the Court, the fund or property entrusted to his care is regarded as being *in custodia legis* for the benefit of any person who may be found by the Court to have the right title thereto. The Court itself takes the care and control of the property by its receiver, who is merely its creature or officer. He being only an officer of the Court it also follows that he has no powers other than those conferred upon him by the order of his appointment, or such as are derived from the established practice of the Court by whose order he was appointed.<sup>19</sup> A receiver is frequently spoken of as the "hand of the Court." This expression very aptly designates his functions with regard to the estate entrusted to his care as well as the relation which he sustains to the Court and the parties to the suit.<sup>20</sup>

Under the practice of the English Courts, and of those Courts that have modelled their procedure on the practice of Courts in England, a receiver is regarded as the executive officer of the Court of Chancery in much the same sense that a sheriff is the executive officer of a Court of Law. The assets and property in his hands are as much in the custody of the law as if levied upon by a sheriff under

(x) Receivers of wreck.

Receivers of wreck are "officers appointed by the Board of Trade for the preservation of wreck, etc., for the benefit of shipping interests." Imperial Dictionary, Vol. III, p. 632.

(xi) Receivers of Droits of admiralty.

These Receivers of wreck were formerly called "Receivers of Droits of Admiralty" (*Ibid.*).

(xii) Receiver-General of the Duchy of Lancaster.

"Receiver-General of the Duchy of Lancaster is an officer of the Duchy Court who collects all the revenues, fines, forfeitures and assessments, within the Duchy, or what is there to be received arising from the profits of the Duchy lands etc." Stat. 39. E. C. 7; Law Dictionary by Sir Thomas E. Tomlins, Knt. London, 1820, Vol. II.

(xiii) Receiver not owner.

It has been held that a receiver appointed by the High Court is not the "owner" of the premises he holds as receiver, within the definition of the term "owner" in the Municipal Act. *W. R. Fink v. The Calcutta Municipal Corporation*, 7 C.W.N. 706=30 C. 721; see also *Po Shan v. Maung Gyi*, 5 L.B.R. 213 (F.B.).

(xiv) Receiver and Trustee in bankruptcy.

For the distinction between a receiver and a trustee in bankruptcy, see *Trades Insurance Co., v. Mann*, 118, Ga. 381.

(16) *Davis v. Duke of Marlborough*, 2 Swans., 108; *Booth v. Clark*, 17 How. 322.

(17) *Coy v. Title, G. & T. Co.*, 157 Fed. 794.

(18) *Story's Equity Jurisprudence*, 8th Ed., Vol. II, S. 829, p. 36.

(19) *Booth v. Clark*, 17 How. 322; *Hunt v. Wolfe*, 2 Daly, 303; *High on Receivers*, p. 3.

(20) *Po Shan v. Maung Gyi*, 5 L. B. R. 213 (F.B.); *Runyon v. Farmers & Mechanics Bank of New Brunswick*, 3 Green Chan. 480; *Van Ransselaer v. Emery*, 9 How. Fr.,



an execution or attachment. In fact, the purpose for which a receiver takes possession is closely allied to that of an ameen taking possession of property in execution of a decree. But the scope of the receiver's authority is in some particulars more comprehensive than that of a sheriff. Because a receiver is usually required to pay all demands upon the collections in his hands to the extent of such collections; while an executing officer has no such powers. He is to be guided strictly by the terms of his warrant. Ordinarily he is "only obliged to make payment of the debt mentioned in the execution" out of the property taken possession of in such execution.<sup>21</sup>

Although, as a general rule, the receiver is regarded solely as an officer of the Court, still, under certain circumstances, and for certain purposes he is also regarded as the agent of a party to the suit. Thus it has been held that "where a receiver is appointed at the instance or in the interest of the person whose property is to be taken into his custody, he is not to be regarded so much as the hand of the Court as the agent or representative of the person who has or for whose benefit his appointment has been procured."<sup>22</sup>

Receiver sometimes regarded as agent of the party to suit.

135. The status of a receiver is merely that of an officer of the court. He is often regarded as the "hand of the court". He acquires no proprietary interest or right in the property of which he is appointed receiver. Having no title to the property, he cannot convey or assign any title to it to any other person. *Po Shan v. Maung Gyi*, 5 L.B.R. 213 (F B).

(21) *In re Merchants Insurance Co.*, 3 Biss. 162. A receiver is not a public officer within the meaning of a statute which exempts public officers from garnishment as to funds in their hands as such officers. *Coheen v. Sweeney*, 105 Mich. 643, 63 N.W. 641. But see also *Receiver v. Suppan*, 30 M. 505=17 M.L.J. 483. And it has been held that the appointment of a receiver is, in effect, an equitable execution. *Hunt v. Wolfe*, 2 Daly, 303. See High on Receivers, Chap. I, pp 4-6.

(22) *Texas & Pacific R. Co. v. Gay*, 86 Tex. 571, 605, 26 S.W. 599, 613. See also Alderson on Receivers, 1905, Ss. 558 and 562 cited by Mukerjee, J., in *Jagat v. Nabagopal*, 5 C.L.J. 270. (278-279). But see also *W. R. Fink v. The Calcutta Municipal Corporation*, 7 C.W.N. 706=30 C 721. Since a receiver is the representative of all parties to the suit, he is bound to exercise his powers for the equal benefit of all, and consequently an agreement to place the property and business in his hands under the control and management of a single party to the suit is void. *Shadewald v. White*, 74 Minn. 208. "In the case of *Wilkinson v. Gangadhar Sircar* (6 B.L.R. 486) which is the leading case on the position of a receiver, Mr. Justice Phear there points out that in his opinion whatever the receiver rightly does with regard to the property under his control he does in the character of agent for the owners of the property. I think that this principle applied just as much with regard to parties to the suit who opposed his appointment or who objected to his receiving particular powers, as it does to the parties at whose instance he is appointed or set in motion. This being so, the ordinary law of principal and agent applies." *P. Mookerjee v. Omerto*, 17 C. 614 at p. 616.

"When the party entitled to the property has been ascertained the Receiver will be considered his Receiver". Per Chandavarkar, J. in 30 B. 250 (255)=6 Bom. L.R. 995 citing *Sharp v. Carter*, (1735) 3 P. Wms. 375 at p. 379; *Boehm v. Wood*, (1823) 1 T. & K. 332 at p. 345.

From what has been stated above, it would appear that the office of receiver is one of great trust and confidence. In fact as much care would be bestowed in the selection of a receiver, as it would be necessary in the selection of a trustee. In both the cases, all the possible safeguards against abuse of the confidence, by way of requiring security, imposing conditions as to investment of surplus funds, etc., are invariably adopted by our Courts.

But yet a trustee differs in many respects from a receiver *pendente lite*. In the first place, a trustee may be appointed by deed or will or in other ways without any order of a Court whereas a receiver is an officer of the Court and is always appointed by the Court.<sup>23</sup> Secondly, the powers and duties of a trustee are prescribed by the deed or will or other instrument creating the trust, and not by the Court, whereas the duties of the receiver are fixed by the general or special rules of the Court that appointed him or by the established practice of such Court. Thirdly, the property in the possession of a receiver is uniformly regarded as being *in custodia legis*, or in the possession of the Court. The possession of a trustee can in no way be regarded as the possession of the Court. A trustee can be called upon to account by any Court that may acquire jurisdiction over him or the estate for which he is the trustee; whereas the receiver is subject only to the control of the Court that appointed him and whose officer he is.<sup>24</sup>

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(23) We are not here concerned with receivers appointed out of court, as to whom see Note (15) (ii) *supra*.

(24) *Nevit v. Woodburn*, 190 Ill. 283; 60 N.E. 500. See High on Receivers, Chap. I. For the position that a receiver is not a trustee, see the judgment of Lord Esher, M.R. in *In re Sacker*, (1882) 22 Q.B.D. 179 cited by Mukerjee, J., in *Jagat v. Nabagopal*, 5 C.L.J. 270 (278). A receiver is not a creditor so as to entitle him to present a bankruptcy application under the Bankruptcy Act. See *In re Sacker*, (1882) 22 Q.B.D. 179 cited by Mukerjee, J., in *Jagat v. Nabagopal*, 5 C.L.J. 270 (277). As to the distinction between a receiver and a trustee in bankruptcy, see *Trades Insurance Co. v. Mann*, 188 Ga., 381. Receiver is not the agent or trustee of any party. See *W.R. Fink v. The Calcutta Municipal Corporation*, 7 C.W.N. 706 = 30 C. 721.

A Receiver occupies a position towards the estate in his hands different from that of an executor or trustee. A Receiver acts through the Court. His acts are virtually the acts of the Court. Executors or trustees, not acting through or under directions of the Court, do not and cannot, under ordinary circumstances, create obligations binding on the estate in favour of creditors. *Mohari Bibi v. Shyma Bibi*, 30 C. 937 = 7 C.W.N. 799.

"When a Court appoints a Receiver in a suit and empowers him to sue a person who is not a party to the suit, the necessary implication is, that the Receiver as an official representative or trustee has to bring the suit for the benefit of the party, who may ultimately prove to be entitled to the property. When the party entitled to the property has been ascertained the Receiver will be considered his Receiver": Per Chandavarkar, J., in 30 B. 250 (255) = 6 Bom. L.R. 995 citing *Sharp v. Carter*, (1735) 3 P. Wms. 375 at p. 379; *Boehm v. Wood*, (1823) 1 T. & R. 332 at p. 345.

The receiver appointed in an ordinary civil suit does not represent the estate nor the parties. He only holds the estate for the benefit of the successful litigant. Although the position of an administrator *pendente lite* is similar to that of a receiver, there is a distinction inasmuch as an administrator *pendente lite* represents the estate for all purposes except for distribution.<sup>25</sup>

Where a receiver is required for the purpose not only of receiving rents and profits, or of getting in outstanding property, but of carrying on or superintending a trade, business, or undertaking, he is called a manager, or more usually a receiver and manager. The appointment of a manager implies that he has power to deal with the property over which he is appointed manager and to appropriate the proceeds in a proper manner.<sup>26</sup>

A receiver, by virtue of his appointment and of his character as representative of all parties interested in the property, "may be regarded as a quasi-assignee, and may be treated as invested with the title to all rights of action possessed by his principal, at the time of the appointment, to such an

(25) *Meerza Kuratul in Bahadur v. L. P. D. Broughton*, 1 C. W. N. 336 (338).

(26) See *Anund v. Ganesh*, 40 C. 678, where the difference between receiver and manager is explained. See also *Sheppard v. Oxenford*, 1 K. & J. 500; *Re Manchester and Milford Railway Co.*, 14 Ch. D. 648, 653; *Truman v. Rolgrave*, 18 Ch. D. 547; *Reid v. Explosives Co.*, 19 Q.B.D. 264; Kerr on Receivers, Sixth Ed., 1912, Ch. XIII, p. 300; but see also *Orr v. Muthia*, 17 M. 504 at p. 504 where it is stated that the two terms "Receiver" and "Manager" are synonymous; under the rules of the Supreme Court of England the expression "receiver" includes consignee or manager appointed by or under an order of the Court. See O. LXXXI, 1, of the Rules of the Supreme Court in England. The position of a common manager under S. 95 of the Bengal Tenancy Act is analogous to that of a receiver. *Naba Kishore v. Atul Chandra*, 16 Ind. Cas. 193.

A manager, as distinct from a receiver, is only appointed with a view to a sale of property as a going concern (*Whitley v. Challis*, (1892) 1 Ch. 64); *Re Victoria Steamboats, Ltd.*, 1897, 1 Ch. 158, as, for example, in the case of a mortgage of a colliery where the business of the colliery is included, as it usually is, in the security (*County of Gloucester Bk. v. Rudry Merthyr Colliery Co.*, 1895, 1 Ch. 629; *Campbell v. Lloyd's, Barnett's and Bosanquet's Bk.*, 1891, 1 Ch. 136, n.; 58 L.J. Ch. 424); or of a hotel, where the goodwill is comprised in the security (*Truman v. Redgrave*, 18 C.D. 547), but not otherwise (*Whitley v. Challis*, 1892, 1 Ch. 64; and see *County of Gloucester Bk. v. Rudry Merthyr Colliery Co.*, 1895, 1 Ch. 629), or of debentures of a company, even though no principal money is due, if the security is in jeopardy, as, for example, by proceedings by execution creditors (*Makins v. Percy Ibbotson & Sons*, 1891, 1 Ch. 133; *Edwards v. Rolling Stock Syndicate*, 1893, 1 Ch. 574); or of the business of a partnership, with a view to realization or dissolution (*Collins v. Barker*, 1893, 1 Ch. 578; *Harris v. Sleep*, 1897, 2 Ch. 80). In a proper case a manager may be appointed, notwithstanding that the mortgagee has taken possession (*County of Gloucester Bk. v. Rudry Merthyr Colliery Co.*, 1895, 1 Ch. 629). See Daniell's Chancery Practice, Seventh Ed., Vol. 2, 1901, Ch. XXVII, p. 1457.

extent at least, as will enable him to sue upon them in his official character."<sup>27</sup>

It has been held that a receiver placed in charge of Zamin by the order of the District Court is a public officer holding lands in attachment under the orders of a Civil Court within the meaning of S. 95 of Madras Act VIII of 1865.<sup>28</sup>

The law relating to the appointment of receivers in Courts, in British India<sup>29</sup> is contained in S. 94 (*d*) and O. 40 of the Code of Civil Procedure,<sup>30</sup> the Criminal Procedure Code, <sup>31</sup> Ss. 88 and 146, and the Specific Relief Act, S. 44.<sup>32</sup> The last Act merely declares that the appointment of a receiver pending a suit rests in the discretion of the Court, and refers to the Code of Civil Procedure for the mode and effect of their appointment and for their rights, powers, duties, and liabilities. Section 94 (*d*) of the present Code of Civil Procedure empowers the Court to appoint a receiver in order to prevent the ends of justice from being defeated. Order XL, rules 1 to 5 of the Code, contain in substance the main body of the law relating to Receivers in British India. Rule 1 declares the power of Civil Courts to appoint receivers. Under that rule, where it appears to the Court to be *just and convenient* the Court may by order—appoint a receiver of any property, whether before or after decree; remove any person from the possession or custody of the property; commit the same to the possession, custody or management of the receiver; and confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.<sup>33</sup>

(27) See Alderson on Receivers, 1905, Ss. 558 and 562 cited by Mukerjee, J., in *Jagat v. Nabagopal*, 5 C.L.J. 270 (278-279).

(28) *Receiver of Annmayyanaikanur Zamin v. Suppan Chetty*, 30 M. 505 = 17 M.L.J. 483; but see also Note 21, *supra*.

(29) For definition of these words, see Act I of 1868, S. 2 (8), as amended by Act XII of 1891; see Act X of 1897 (General Clauses) S. 3 (7).

(30) Act V of 1908, O. XL., rr. 1-5.

(31) The Criminal Procedure Code in Ss. 88, 146 (2), deals with the appointment of receivers of attached property. Specific relief by the appointment of a receiver cannot be granted for the mere purpose of enforcing a penal law. Act I of 1877, S. 7.

(32) Act I of 1877, S. 44.

(33) See Civ. Pro. Code, 1908, O. XL, r. 1.

It is further enacted that nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Under the Code of Civil Procedure 1882, S. 505, a receiver could only be appointed by the High Courts and the District Courts, and not by Courts subordinate to the District Courts. This bar has now been removed by the omission of that section in the present Code of 1908. Consequently a receiver may now be appointed by the subordinate Courts as well.

The second rule deals with the power of the Court to fix the remuneration due to the receiver. It declares that the Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.<sup>34</sup>

Rule 3 deals with the duties of the receiver. It declares that every receiver so appointed shall furnish security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property; submit his accounts at such periods and in such form as the Court directs; pay the amount due from him as the Court directs, and be responsible for any loss occasioned to the property by his wilful default or gross negligence.<sup>35</sup>

Rule 4 declares how the duties of the receiver may be enforced. Under this rule, where a receiver fails to submit his accounts at such periods and in such form as the Court directs, or fails to pay the amount due from him as the Court directs, or occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.<sup>36</sup>

Rule 5 enumerates certain special cases when the Collector may be appointed receiver. Thus, where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.<sup>37</sup>

Section 88 of the Code of Criminal Procedure, 1898, declares that one of the modes in which the attachment of property under that section

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(34) See Civ. Pro. Code, 1908, O. XL, r. 2.

(35) See Civ. Pro. Code, 1908, O. XL, r. 3.

(36) See Civ. Pro. Code, 1908, O. XL, r. 4.

(37) See Civ. Pro. Code, 1908, O. XL, r. 5.



can be effected by a criminal court is by the appointment of a receiver.<sup>38</sup>

Section 146 of the same Code deals with the appointment of receivers of attached properties. It declares that in cases of dispute as to possession of immoveable property if the magistrate decides that none of the parties was then in possession, or is unable to satisfy himself as to which of them was then in possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.<sup>39</sup>

The Specific Relief Act, 1877, also contains certain provisions regarding the appointment of receivers. Section 5 declares that one of the modes by which specific relief is given is by the appointment of a receiver.

Section 7 declares that specific relief, a form of which is the appointment of a receiver, cannot be granted for the purpose of enforcing a penal law.

Section 44 declares that the appointment of a receiver pending a suit is a matter resting in the discretion of the Court. It further declares that the mode and effect of his appointment and his rights, powers, duties and liabilities are regulated by the Code of Civil Procedure.

The three earlier Civil Procedure Codes<sup>40</sup> (Act VIII of 1859, Act X of 1877, and Act XIV of 1882) also contained provisions regarding the appointment of receivers, and their powers and duties.

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Act X of 1877, however, contained provisions of a more complete character, and which were, in fact, with some minor alterations, the same as those of the present Code. Section 92 of Act VIII of 1859 enabled the Court to appoint a receiver or manager in all cases in which it might appear to the Court to be necessary for the preservation or the better management or the custody of any property "which is in dispute in a suit."

It declared that "in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may

(38) See the Code of Criminal Procedure (Act V of 1898), Ss. 88 (3), (4), (5).

(39) See the Code of Criminal Procedure. 1898, S. 146 (2).

(40) See Act VIII of 1859, Ss. 92, 94, 243; Act X of 1877, Ss. 503-505; Act XIV of 1882, Ss. 503-506.

be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property and the collection of the rents and profits thereof, and the application and disposal of such rents and profits as to the Court may seem proper."

Section 243 of the same Code enabled the Court to appoint a manager to realize debts or rents and receipts of landed property where the debts or land were attached in execution of decree.<sup>41</sup> Chapter XXXVI of the Code of 1877, which, with some minor alterations,<sup>42</sup> was identical with the corresponding chapter of the last Code of 1882, which more or less is re-enacted in O. XL of the present Code, supplied the place of both of these provisions, and going further, gave the Court very general powers as to the appointment of receiver.<sup>43</sup> Further, orders made under section 92 of Act VIII of 1859 were appealable only at the instance of the defendant,<sup>44</sup> but orders made under section 503 of the Codes of 1877<sup>45</sup> or 1882<sup>46</sup> were appealable at the

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(41) Section 243 of the Civ. Pro. Code, 1859, ran as follows:—"When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses or other immoveable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immoveable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment-debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the judgment-debtor, it shall be competent to the Court, on the application of the judgment-debtor, to postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount. In any case in which a manager shall be appointed under this section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct."

(42) In S. 503, Cl. (d), the words "as the Court thinks fit" were inserted after the word "remuneration" by Act VII of 1888, S. 42. In S. 504, Act X of 1877, the opening words of the section were "if the property be" instead of "where the property is." In the same section, Act VII of 1888, S. 43, substituted the words "the Court may with the consent of the Collector appoint him" for the words "the Court may appoint the Collector" in Act X of 1877, so as to render the Collector's consent necessary to his appointment as receiver.

(43) Ss. 503-505 of Act X of 1877 were, except as to the points mentioned in the last note, identical with the same sections of the last Code. As to S. 504, see Act VIII of 1859, S. 92. Section 505 was first inserted in the Code by Act X of 1877. A Mofussil Court of Small Causes could not appoint a receiver under the Code of 1877, as Ch. XXXVI was not extended to those Courts, but it is otherwise under the present Code: See *Nursingdas v. Tulsiram*, 2 B. 558, where it was held that under Civ. Pro. Code, 1877, a Court of Small Causes could not appoint a receiver.

(44) Act VIII of 1859, S. 94.

(45) Act X of 1877, S. 588 (e).

(46) Act XIV of 1882, S. 588 (24).

instance of either party. The present Code also gives a right of appeal to either party if he considers himself aggrieved by the order of the Court.<sup>47</sup> The provisions of the present Code are (with one important exception) the same as those of the last, with certain small omissions and alterations of a minor character.<sup>48</sup>

We have so far traced the law since the passing of the Civil Procedure Code of 1859. But what was the law prior to the passing of that Code? Had the Courts power to appoint receivers? Did they appoint receivers at all? If they did, under what authority did they make the appointments? Prior to the establishment of the High Courts, the Supreme Courts in the Presidency towns appointed receivers following the practice of the Court of Chancery in England.<sup>49</sup> As early as 1774 in the Charter establishing the Supreme Court of Judicature in this country it is ordained that the Supreme Court "be a Court of Equity with full power and authority to administer justice as nearly as may be according to the rules and proceedings of the Court of Chancery in England."<sup>50</sup>

Accordingly we find that, as early as 1814, applications for the appointment of receivers for the custody and control of the estates of Hindus had been made and granted by the Supreme Court of Bengal.<sup>51</sup>

(47) Act V of 1908, O. XLIII, r. 1 (S).

(48) See Amir Ali's Code of Civil Procedure, Notes under O. XL, rr. —15. There are also some other provisions relating to the appointment, duties and powers, etc., of receivers which the Indian Legislature has enacted and which are scattered in several codes dealing with special subjects. Reference may be made to the following :—

(i) Act III of 1909, Presidency Towns Insolvency.

(ii) Act III of 1907, Provincial Insolvency, Ss. 18—23.

(iii) Act XXVIII of 1866, Trustees' and Mortgagees' Powers, Ss. 12—18.

(iv) Act II of 1886, Income-tax, S. 22.

(v) Act IX of 1908, Limitation, Sch. I, Art 172.

(vi) Act VII of 1913, Companies, Ss. 118, 119. See these sections cited in full in the appendix.

(49) See *Kistonundo Biswas v. Prawn Kissen Biswas*, 1829, Clark's Rules and Orders, 1829. Notes of decided cases, 52. As to the High Courts, see High Courts Act, 1861, Cls. 9. — 11, and Letters Patent, S. 19. As to the former powers of District Courts to appoint receivers, see *John Tiel v. Abdul Hye*, 19 W.R. 37 (39), 1872; *Joynarain Geeree v. Shibpersad Geeree*, 6 W.R. Misc. 1, 1866, Jurisdiction of Sudder Ameen.

(50) See Charter of the Supreme Court, dated 26th March 1774, Cl. 18, given in Smoults' and Ryan's Rules and Orders, Vol. I.

(51) The following extract from the Notes by Mr. Montriau, pp. 124 to 129 of his reports, are important as showing some of the earliest instances in which receivers were appointed by Courts in British India, and as the reports themselves are rather rare and not easily available to the practitioners in the mofussil, we think it may be found useful to cite them in full :

He says :—The following, so far as the reporter can learn, are the only precedents in this Court which bear upon the general question of displacing the manager of a Hindu undivided family (by the appointment of receivers). They have been collected from the records:—



Now the subject is governed by the special provisions of the High Courts Act, the Letters Patent and the Code of Civil Procedure, which

(1813) In the case of *Nubkissen Mitter and others v. Hurrishchunder Mitter and another*, one of several grandsons and joint devisees of a testator was charged as manager (after the death of the executor and the manager under the will), with waste, fraud and misappropriation, by the owners of eleven-annas share of the undivided estate. He denied, and disclaimed, in his answer, having the possession or management: the other defendant was an infant. A receiver of part of the estate (the Chandaney Choke bazaar) was applied for until the hearing; an order *nisi* obtained (6 September 1813), and there being no cause shown or opposition, the receiver of the Court was appointed. Montriou, 124=Indian Decisions, Old Series, Vol. I, p. 560.

(1814) In a case which occurred in 1814 in the Supreme Court of Bengal a bill was filed for account, receiver, and partition by the younger sons of a testator against the elder, who were managers, together with two other persons. It was assumed that the Court had jurisdiction to appoint a receiver. See Sir Edward Hyde Easts' Notes, 2 Morley's Dig. No. IX, p. 11=Indian Decisions, Old Series, Vol. III, 774.

In the case of *Chatoo Sing v. Raj Kissen Singh*, Montriou's Reports, p. 99=Indian Decisions, Old Series, Vol. I, p. 546, which was a suit by the son of a Hindu testator (after attaining his age) for his share of the property and for an account, an application was made for the appointment of a receiver. A receiver was appointed over the whole estate although it was opposed by the owners of the nine anna share.

(1820) In *Rajkrishno Bonnerjee and others v. Tarraneychurn Bonnerjee and others*, the manager himself petitioned to be relieved, and obtained an order *nisi* that he 'have leave to depart from and give up the possession charge and management of the estate and affairs real and personal of Radamohun Bonnerjee the testator &c.,' and for a reference for a receiver. A petition was subsequently presented against the manager, charging him with misconduct, waste and exclusion; the whole matter was debated on the day when this petition was filed (30 October 1820) and an order made, on that day, that the manager, 'Omachurn Bonnerjee has leave to give up his charge and management;' he was ordered within three weeks to bring the personal estate into Court, and the Accountant General of the Court was appointed receiver of the estate, real and personal. See Montriou, 125=Indian Decisions, Old Series, Vol. I, p. 560.

(1823) In *Buddinauth Paul Chowdhry v. Bycauntnath Paul Chowdhry and others*, the plaintiff prayed for an undivided share of a joint estate, as co-heir of the defendant's ancestor: the defendants claimed the property as separate, and otherwise disputed the plaintiff's claim. The decretal order at the hearing (12 December 1820) declared the family to be joint and undivided in estate to a certain date; and referred to the Master to take an account of the joint estate, with liberty to the parties to show a division at the date specified. The order *nisi* was granted (12th November 1823) 'on reading the decretal order' for a receiver of the whole estate, or of the share of the plaintiff: On the 24th Nov., it was made absolute for a reference for a receiver of the whole. \* \* \* Anonymous Montriou 125-128=Indian Decisions, Old Series, Vol. I, pp. 561-562.

(1827) *Wamischunder Paul Chowdhry and another v. Premchunder Paul Chowdhry and others*, was a case of alleged exclusion and non-compliance with the directions of the will by the managers and executors. The principal surviving manager Isserchunder, behaved with great contumacy, and in disobedience of the orders of the Court for maintenance of the plaintiffs and their families. Mr Clarke has stated, with correctness, what occurred with reference to the motion for a receiver, in June and July 1824. Subsequently an order was obtained (1 May 1827), that the manager give security within fourteen days for the regular payment of two three-annas shares of the rents, and in default of such security, or in default of regular payment, a receiver was ordered *of the two three-annas shares*. The will of the ancestor, Kistnochunder Paul Chowdhry, is set out at the foot of this note. Montriou 128=Indian Decisions, Old Series, Vol. I, p. 562.

last confers the power in express terms on all Civil Courts, superior and inferior alike.

With regard to the power of District Courts to appoint receivers, his Lordship Phear, J., in a case that came before him in the year 1872 stated the law as follows:—  
 (ii) Regarding the District Courts. “We do not know whether it has ever been held that the District Courts in this country have the authority to appoint a receiver” for the purpose of preserving the property which is the subject of litigation and of keeping it within the reach of the Court until

(1830) In *Kistnonundo Biswas and others v. Praunkissen Biswas*, there was a decree confirming and carrying into effect a partition,—that each party should hold his share in severalty,—that the elder brother should continue to pay the infant's (Kistnonundo's) maintenance, and a reference for a receiver of the infant's estate. The Receiver of the Court was appointed (24 June 1830) receiver of the estate of *Kistnonundo*. Montriou 128=Indian Decisions, Old Series, Vol. I, p. 563.

(1832) In the case of *Sreemutty Dossee and others v. Ramchunder Ghose and others*, the joint family consisted of females and infants; the estate was wholly unprotected, and in imminent danger from neglect. A receiver was applied for at the instance of the only adult male relative of the family, the husband of one of the co-parceners, as an act of necessity to save the property. The order *nisi* was granted (7 Dec. 1832) for appointing the receiver of the Court, and, no cause being shown, was confirmed. Montriou 128, 129=Indian Decisions, Old Series, Vol. I, p. 563.

(1833) *Sreemutty Khettermoney Dossee v. Nubkissen Mitter and others* was a bill filed by the widow and heiress of the owner of two-thirds of an estate—not as a member of an undivided family, but as tenant in common under a partition and a decree of this Court, and by purchase of his co-tenant's interest—in order to contest the validity of an alleged last will of her husband, Kistnocaunt Mitter, set up by the owner of the one-third. In this case the Receiver of the Court was appointed (19 February 1833) receiver of the estate of the deceased; but the circumstances bring it within the ordinary rules of an English Court of Equity. Montriou 129=Indian Decisions, Old Series, Vol. I, p. 563.

(1839) In the case of *Sreemutty Ullingomoney Dossee v. Ramsabuck Mullick*, the widow and heiress of one son of the intestate, charged the other son with waste of the undivided estate, and with exclusion. An order *nisi* was granted for a receiver of the plaintiff's share of the rents and profits; but, upon argument (3 May 1839), the order was discharged. In this case the grounds of fact in support of the motion were completely met and refuted; an order was made for delivery to the widow of certain *streedhun*. Montriou 129=Indian Decisions, Old Series, Vol. I, p. 563.

(1844) For a case where the Sudder Dewani Adawlut Court of Bengal appointed a receiver pending suit on a mortgage deed, see *Kishna Nand v. Eshan Chunder*, 2 Sudder Dewani Adawlut Reports 386=Indian Decisions, Old Series, Vol. IX, p. 233.

(1851) For a discussion as to the acts which constitute misconduct on the part of executors so as to justify the appointment of a receiver. See *Crastnarao Wassadewji v. Raghunath Harichandharji*, (1851) Perry, O.C. 150=Indian Decisions, Old Series, Vol. IV, 136.

(1851) Where one entitled to a share of real estate applied for a receiver of the entire joint property,—and some of the co-sharers who resisted the appointment were not subject to the jurisdiction;—a receiver was granted, limited, to the share of the applicant, and against those only who were subject to the jurisdiction. *Buddinath Paul Chowdry v. Bycauntinath Paul Chowdry*, (1851) 2 Taylor & Bell 192=Indian Decisions, Old Series, Vol. II,

a final decree can be made between the parties. "Probably they would be held to have it if it should become necessary in order completely to administer justice within their jurisdiction to make such an appointment. But we do not at this moment remember any case in which such an appointment has been made, and we have, that at any rate, such cases if they have ever occurred, are exceedingly rare."<sup>52</sup> Now all doubt is removed. The Civil Procedure Code, 1882, and the earlier Codes specially conferred this power on the District Courts. The Code of 1882 did not confer on Courts subordinate to the District Courts the direct power of appointing receivers.<sup>53</sup> But in the present Civil Procedure Code of 1908 even this restriction is removed.<sup>54</sup>

(iii) Regarding Sudder Ameen and other Subordinate Courts in the mofussil. As regards the power of Sudder Ameen and such subordinate Courts, Justices Loch and Jackson said in a case that came up for decision before them in 1866 that "it would be going a great deal too far to say that the Principal Sudder Ameen had all the powers of a Court of Chancery." The Civil Procedure Code, 1859, had then laid down with precision the cases in which the mofussil Courts could grant injunction or appoint receivers, and the High Court said that it would not lightly be disposed to extend their jurisdiction in this respect.<sup>55</sup>

Even the Civil Procedure Code, 1882, did not confer on Courts subordinate to the District Courts the direct power of appointing receivers. This power is, however, now conferred by the present Civil Procedure Code, V of 1908, O. XL, r. 1.

As we have already seen, the Indian law regarding the appointment, duties and powers of receivers is contained in certain sections of the Civil Procedure Code, the Specific Relief Act and some other Acts. But these sections are so general in their terms, that they cannot be held to be a complete guide to all cases that may come before our Courts respecting receivers. In such cases our Courts would no doubt resort for help to the previous decisions of the High Courts in this country, as well as those of the Privy Council on appeal from India. But there may occur cases which may not be completely covered by Indian Decisions or on which some useful light may be thrown by foreign decisions. In such cases, the question arises whether resort can be had

(52) See *in the matter of John Tiel & Co. v. Abdool*, 19 W. R. 37 (39).

(53) See S. 505 of the Civ. Pro. Code, 1882.

(54) See O. XL of Act V of 1908.

(55) See *Iyyanarain v. Shibbersad*, 6 W. R. Mis. Rul. 1 (3).

to the decisions of the Superior Courts in England and the opinions of English jurists.

The Regulations by which the Courts in India are being guided direct that in cases not specifically provided for by the Indian Legislature or where direct authority is not to be found in Indian Law the Judges are to decide cases according to "justice, equity and good conscience".<sup>56</sup> But no guidance is given as to what would be just and equitable. Consequently from the earliest times the tendency of the Courts has been to adopt more or less the accepted principles of English Law and apply them to this country. This tendency to borrow principles and precedents from English Law has not been peculiar to this branch of Indian Law. Wherever there are not specific decisions of the Indian Courts or definite provisions of the Indian legislature, the tendency has been to adopt from English Law, as if they were of universal application. No doubt English case-law as such is not binding on the Courts in this country. It is adopted and followed by our Judges, not because it is English Law, but because it is in accordance with the rules of justice, equity and good conscience which the Indian legislature has enjoined our Courts to follow. As for the High Courts in the Presidency towns there is yet an additional ground why English authorities may be referred to. It has been held that in the matter of appointment of receivers the Indian High Courts have the same power as those possessed and exercised by the Courts in England, and that the practice in such respects should also be the same.<sup>57</sup> Consequently it is but just and convenient that the High Courts should refer to the precedents of the English

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(56) See Bengal Reg. III of 1793, S. 21; Bengal Reg. VI of 1793, S. 31; Bom. Reg. IV of 1827, S. 26; *Secretary of State v. Advocate General*, 1 B.L.R.O.C.J. 87; *Mithibai v. Limji*, 5 B. 506; *Debnarain Dutt v. Ramsadhan Mondal*, 17 C.W.N. 1143=20 Ind. Cas. 630=18 C.L.J. 603=41 C. 137.

(57) Per Sargent, C.J. in *Jaikessondas v. Zenahai*, 14 B.431 at p. 434; *Ram Lochan v. C. S. Hogg*, 10 W.R. 430. In the case of *Ramji Ram v. Saligram*, 14 C.L.J. 215=14 C.W.N. 248=5 Ind. Cas. 96, it has been held that under the Code of 1908 (O.XL, r. 1) our Courts have been given precisely the same discretion in questions of appointment of receiver that the Courts in England have; See also *Pana v. Ana*, 3 Bur. L.T. 95=8 Ind. Cas. 1191; *Ram Lochan v. C. S. Hogg*, 10 W.R. 430 (431).

English cases relating to receivers are referred to in *Yeshwant v. Shankar*, 17 B. 388 at pp. 390-391; *Musst. Budhwanti v. Musst. Bishen*, 59 P.L.R. 1902=73 P.R. 1902; *Sidheswari v. Abhoyeswari*, 15 C. 818=13 Ind. Jur. 258; *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974 at pp. 975-976=19 Ind. Cas. 873; *Pala Mal v. Tek Chand*, 61 P. L.R. 1902; *Mahamed Kasim v. Panchapakesa Chetti*, 35 M. 578 at pp. 580-581=17 Ind. Cas. 233; *Mohini Mohan v. Baroda Kanta*, 12 Ind. Cas. 780=1\* C.L.J. 445; *Mrs. Levina v. Madhabmoni*, 14 C.W.N. 560, 565=11 C.L.J. 489=5 Ind. Cas. 390; *K.B. Dutt v. Shamal*, 41 C. 92 (101); *Shamal Dhone v. Lakhimoni*, 6 Ind. Cas. 323 (326); *Mohari Bibi v. Shyama Bibi*, 30 C. 937=7 C.W.N. 799; *Badri v. Civil Nazir*, 56 P.R. 1913=17 Ind. Cas. 751; *Rowland Hudson v. Pierpont Morgan*, 13 C.W.N. 654=6 C.L.J. 363=36 C. 713=1 Ind. Cas. 356; *Pana v. Ana*, 8 Ind. Cas. 1191.

Courts because the two courts possess similar powers and adopt similar procedure.<sup>58</sup>

As for English text books, Kerr on Receivers is referred to in *Pala Mal v. Tek Chand*, 61 P.L.R. 1902; *Mahamed Kasim v. Panchapakesa Chetti*, 35 M. 578 at pp. 581, 582 = 17 Ind. Cas. 233; Seton on Judgments is referred to in *Shamal Dhona v. Lakhimoni*, 6 Ind. Cas. 323 (326). Lindley on Partnership is referred to in *Tanikachala Mudaliar v. Alamelu Ammal*, 16 M.L.T. 26 (27).

(58) As early as 1868, in the case of *Soroop Chunder v. Tryloky Nath Roy*, 9 W.R. 230 (232), Sir Barnes Peacock justified the borrowing of English principles in the following words:—"Now having to administer justice, equity and good conscience where are we to look for the principles which are to guide us? We must go to other countries where equity and justice are administered upon principles which have been the growth of ages, and see how the courts act under similar circumstances; and if we find that the rules which they have laid down are in accordance with the true principles of equity, we cannot do wrong in following them." See 9 W.R. 230 at p. 232 Mr. Whitby Stokes in introducing the Easements Bill in the Imperial Legislative Council said 'The law of England being just and equitable and almost free from local peculiarities has in many cases been held to regulate the subject in this country.' The following observations of Sir Henry Maine in his *Village Communities* may also be noted:—Into all departments of Indian Law which were scantily filled the English law steadily made its way in quantities nearly proportioned to the original barrenness of each of them. The higher courts, while they openly borrowed the English rules from the recognised English authorities, constantly used language which implied that they believed themselves to be taking them from abstract body of legal principle which lay behind all law; and the inferior Judges, when they were applying some half-remembered legal rule learnt in boyhood, or culling a proposition of law from a half-understood English text-book, no doubt honestly thought in many cases that they were following the rule prescribed for them, to decide 'by equity and good conscience' wherever no native law or usage was discoverable. The result, however, of the process is plain upon simple observation. Whole provinces of law became exclusively, English. The procedure of Civil Courts became a close reproduction of the procedure of the Court of Chancery in its worst days. In the parts of law less universally affected by English law, the infusion of English principles and distinctions was still very considerable. I do not think that there is any reason to apply harsh language to this great revolution; for revolution it assuredly was, little as it was intended or even perceived. It was quite inevitable in the absence of formal legislation; for the indirect effect of English Government was, from the first, enormously to quicken the springs of social activity, principally by breaking up that common life of families and communities by which they had been retained. All sorts of new questions were raised, moot points started in civil affairs; and when principles were required for the settlement of the resulting controversies, they were necessarily taken from English Law, for, under the circumstances, they could be found nowhere else. Maine's *Village Communities* in the East and the West, pp. 298-300. The system of borrowing English principles has not been without its defects. Mr. Lushington of the Bengal Civil Service examined before the House of Lords' Committee on 21st April 1853, thus speaks of the Mofussil system in answer to question put by the Committee: 'Will you state what was the principal defects to which you allude?'

A "The principal defect, and the one which has attracted my attention more than any other, is a palpable disposition on the part of the Superior Courts, the Company's Courts, to encourage technicalities. It is of the utmost importance in a country like India, that a simple manner of transacting business and obtaining judicial decisions should be observed. Instead of that, the great aim at present, on the part of many Judges, is to follow the proceedings of English law, whenever they can learn them, and to force them upon the Natives, who are particularly averse to them." See the same cited in Norton's Jurisprudence, 1862, p. 6.



Thus we find as early as 1846 in the case of *Chatoo Singh v. Rajkissen*<sup>59</sup>, which came up for decision before the Supreme Court of Bengal in which the question was whether a receiver was to be appointed over the estate of a deceased Hindu, his Lordship the Chief Justice referred to English cases and English text books<sup>60</sup> with as much freedom as if prior decisions of the Indian High Courts would be referred to by our Judges in any modern judgment. No objection seems to have been raised at the bar to the citation or adoption of English authorities.<sup>61</sup>

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In fact a general reading of the Indian reported cases, ancient and modern, shows that the Judges approached the question as if they believed that English cases and that English text-books are the natural sources from which they ought to draw the principles to be applied in cases between litigants in this country. It has been held, in interpreting an Indian Act help may be derived from the English cases which are as much authoritative as the decisions of the Superior Courts of this country, and where the Indian Law is similar or the same, their authority is conclusive. *Hough v. Windus*, 12 Q. B. D. 224. Gour's Transfer of Property, 3rd Ed. Vol. I, p. 7. The mofussil lawyer in this country generally feels shy of foreign decisions, and not so very long ago even in some of the High Courts the citation of English precedents was not always appreciated. But with increasing knowledge matters have now improved, though the American case-law unfortunately yet remains a *terra incognita* for most of us. See Banerji's Specific Relief, Preface to the Tagore Law Lectures, 1906.

(59) Montrieux's Reports, 1846, p. 99 = Indian Decisions, Old Series, Vol. I, p. 546.

(60) Daniel's Chancery Practice, p. 427.

(61) There is yet another reason why English and American decisions are not only useful but a reference to them is necessary in one respect with regard to the law of receivers. The law regarding receivers is to a large extent based on doctrines of equity jurisprudence which were originally developed in England and are now administered equally by English and American Courts, and many of the provisions of Indian Courts have been bodily extracted from the draft Civil Code of New York, as in the case of the Specific Relief Act and the Contract Act. The guidance afforded by the decisions of these foreign courts in interpreting and applying the provisions of the Indian Act is therefore of peculiarly valuable character. It is scarcely necessary to emphasise that the essential principles of equity know of no local or temporal conditions, and that no genuine student of law, or of any other subject of study, for the matter of that, can object to light because it comes from one quarter rather than another. See Banerji's Specific Relief, Tagore Law Lectures, 1906, pp. vii & viii.

In the case of *Sidheswari v. Abhoyeswari*, 15 C. 818 at pp. 822 and 823 = 13 Ind. Jur. 258, their Lordships Macpherson and Gordon, JJ., stated as follows:—"S. 503 of the Code of Civil Procedure, 1882, certainly gives a wide discretion to the Courts. It empowers the Court to appoint a receiver whenever it appears to be necessary for the realization, preservation, or better custody or management of any property, the subject of a suit. *This power is not however greater than that exercised by the Courts in England; and it must, we think be exercised on the same principle*, that is to say, with a sound discretion on a view of the whole circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which averted, and has to be established. The principles to which we refer are stated in Kerr on Receivers (2nd Ed. p. 3) by Lord Cranworth in *Owen v. Homan*, 4 H.L.C. 997 and in *Clayton v. Att.-Gen.*, Cooper's cases in Chancery, Vol. I, p. 97. *We see no ground for the contention that those principles are not applicable to this country. They were adopted to prevent a wrong to the defendant which might equally be done here if they were not followed.*" (The italics are ours).

Again in the year 1868, Justice Phear stated that the rule in the original side of the Calcutta High Court in the matter of the appointment of receiver *pendente lite* was taken from the English Court of Chancery and that the decision of cases in our Courts ought to be governed by the decisions as laid down by the Chancery Courts in England.<sup>62</sup>

Next to English case-law and the opinions of eminent English Jurists, the Indian Courts would refer with great respect to the exposition of law by American lawyers, Judges and Jurists on points which arise for decision in the Indian Courts<sup>63</sup>. But the practice of taking American decisions as authorities in the same way as if they were decisions of our Courts is not proper.<sup>64</sup> Because among other things, it involves an inquiry, which often is not an easy one, whether the law of America on the subject in which the point arises is the same as our own.<sup>65</sup> Much to the same effect are the observations of the Judicial Committee in an appeal from India. Their

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(62) *Ram Lochun v. Hogg*, 10 W.R. 430 (431).

(63) If, as if we have already seen, English case-law can be referred to for the purpose of guidance, though not as authority, it necessarily follows that the American case-law and American text-books can be referred to for the same purpose; because both the American Law and English Law are similar in very many respects. In fact, the source of American Law is the Common Law of England. When the Government of the several American Colonies on the Atlantic coast became, in 1775 and 1776 or thereabouts, independent of the mother country, they each adopted the Common Law of England, as it then existed and had theretofore administered from the foundation of the colonies by the Colonial Courts, as the Common Law of the land. Thus for example, New York adopted the Common Law as it existed on the 19th day of April 1775—the date of the battle of Bunker Hill—as the law of the state. All English statutes and decisions in force on that day are therefore now a part of the Common Law of New York, except so far as they may have been repealed, modified, changed or overruled by subsequent legislation or judicial decision in that State. Each of the original States of the Federal Union did substantially the same thing, and equally in the States admitted to the Union since the formation of the present national government, the Common Law prevails by similar action of the people except in the case of Louisiana, where the Code Napoleon is the fundamental law. Many of those great English Statutes, like the Statutes of Frauds, or Limitations of Wills, or Charitable uses, and Trusts, and the like, have been substantially re-enacted in the various States. Each one, therefore, of the forty or more independent commonwealths which compose the Federal Union, excepting only the State of Louisiana, has a common Law of England. And with difference for the most part immaterial, and surprisingly slight and insignificant, in consideration of the lapse of more than a century, and the free development of the law along independent lines in nearly half a hundred distinct and separate jurisdictions beyond the sea, it may be said, speaking not too broadly, that the Common Law of England, as now administered here, is equally the Common Law to-day of all the American commonwealths, excepting Louisiana. Law students in America accordingly study at the outset Blackstone's *Commentaries*, and are set to read the English Statutes and Law Reports. American Judges regard with favour the citation of English cases in point, *arguende* and by way of illustration, and American Reports and text-books contain constant references to them. See *Encyclopædia of the Laws of England*—Heading "American Law."

(64) *Swamirao v. Kashi Nath*, 15 B. 419, followed in *Balaji v. Sakharam*, 17 B. 555 (558).

(65) *Ibid*.

Lordships said :—"It is admitted that in this country there is no authority directly in point. There are direct authorities in the United States in favour of the conclusion at which the High Court has arrived. American authorities are, no doubt entitled to the highest respect. But this is a question that must be decided by English law. In the dearth of English authority, it seems to their Lordships that recourse must be had to the principle on which the Law in England on this subject is founded."66

It must also be noted that authorities are not wanting where the practice of citing American authorities are condemned in somewhat strong language in some of the recent cases. The citation of American cases has been condemned to some extent by the highest authority in England. In a case where a claim arose out of a contract made in America an attempt was made to cite American cases. But the attempt was promptly repressed by Halsbury, L. C. Fry and Cotton, L. JJ., who protested against the citation of American authorities, Halsbury, L. C., observing : "We should treat with great respect the opinion of eminent American lawyers on points which arise before us, but the practice, which seems to be increasing, of citing American decisions as authorities, in the same way as if they were decisions of our own Courts, is wrong."67 To which Fry, L.J., added : "I also have been struck by the waste of time occasioned by the growing practice of citing American authorities."68

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(66) *Macintosh v. Dun*, 12 C.W.N. 1053 (1059) (P. C.); American case-law relating to receivers is referred to in P.L.R. 1908, p. 77 (Journal portion); *Jotindra Nath v. Sarfaraj Mia*, 14 C.W.N. 653 at pp. 655-658=6 Ind. Cas. 214; *Mohini Mohan v. Baroda Kanta*, 12 Ind. Cas. 780=14 C.L.J. 445; *Mrs. Levina v. Madhabmoni*, 14 C.W.N. 560 (565)=5 Ind. Cas. 390=11 C.L.J. 489; 5 M.L.T. 77-79 (Journal portion); *Madhu v. Sabar Ali*, 14 C.W.N. 681 at pp. 683-685=6 Ind. Cas. 177=11 Cr. L.J. 288; *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=6 C.L.J. 363=36 C. 713=1 Ind. Cas. 356.

As for American text-books on Receivers, High on Receivers is referred to in *Mahamed Kasim v. Panchapakesa Chetti*, 35 M. 578 at pp. 581, 582=17 Ind. Cas. 233; *Rowland Hudson v. Pierpont Morgan*, 13 C.W.N. 654=6 C.L.J. 363=36 C. 713=1 Ind. Cas. 356.

Alderson on Receivers is referred to in *Mahamed Kasim v. Panchapakesa Chetti*, 35 M. 578 at pp. 580, 581=17 Ind. Cas. 233; *Rowland Hudson v. Pierpont Morgan*, 13 C.W.N. 654=6 C.L.J. 363=36 C. 713=1 Ind. Cas. 356.

Beach on Receivers is referred to in *Rowland Hudson v. Pierpont Morgan*, 13 C.W.N. 54=6 C.L.J. 363=36 C. 713=1 Ind. Cas. 356.

(67) See *Swamirao v. Kashi Nath*, 15 B. 419; followed in *Balaji v. Sakharani*, 17 B. 555 (558); *In re Missouri Steamship Co.*, 42 Ch. D. 321

(68) *In re Missouri Steamship Co.*, 42 Ch. D. 321 (330, 331). On the authority of this case, Dr. Gour remarks "if then American cases are no authorities in England, it naturally follows that their citation for the purpose of elucidating Indian statutes is nothing more than a "waste of time" so feelingly deplored by the English Judges." See Gour's Transfer of Property Act, 3rd Ed., Vol. I, p. 7. But see the observations of Cockburn, C.J., in *Scaramanga v. Stamp*, L.R. 5 C.P.D. 295 at p. 303. The remarks of Dr. Gour are perhaps somewhat too strong. Cockburn, C.J., in the case of *Scaramanga v. Stamp*, L.R., 5 C.P.D. 295, 303 (1880) observed as follows :—"The case before us presents itself, therefore, so far as our Courts are concerned, as one of the first impression, on which we have to declare, or perhaps, I may say, practically, to make the law. I am glad to think that in doing so we



In some of the recent cases, American case-law and the recorded opinions of American Jurists are freely cited, and their application to the Indian circumstances freely discussed, and they are adopted or rejected as the peculiar circumstances of the Indian society require.<sup>69</sup>

The practice however is not a new one in our Courts. As early as 1848 in the case of *Malcom v. Smith*<sup>70</sup> which arose before the Supreme Court of Bengal Sir L. Peel, C.J., referring to the citation of American authorities before him said: "I have not the slightest intention of treating the American decisions with disrespect. They are not authorities to which we must yield, as the decisions of our Superior Courts; but they are in general well deserving of attention as able expositions of the law." In another case which came up for decision before the same learned Judge in the same year his Lordship said: "With respect to the American decisions, they are not authority with us, though often extremely valuable as guides to the formation of a correct judgment. In order to ensure uniformity of decisions in the same county, the decisions of the higher tribunals are or should be authorities to inferior tribunals; in such cases, the Judge, though his understanding is not convinced, bows to the authority. But he is not justified in deciding contrary to his own conclusions, in deference to a foreign tribunal, however superior in general he may acknowledge such jurists to be to himself."<sup>71</sup>

The law on this point which was so clearly laid down by Sir L. Peel, C. J., as early as 1848 is still substantially the same, and the practice of our Courts during all these years only confirms the statement of law made by the learned Chief Justice.

While it is often desirable that principles and precedents of English and American law may be referred to in the decision of Indian cases, yet, in the matter of their application, the special and peculiar circumstances of Indian society ought not to be lost sight of. Justice Woodroffe in his standard work on the Law of Receivers draws particular attention to this aspect of the subject.

**Application of English and American law limited by the peculiar circumstances of Indian society.**

have the advantage of the assistance afforded to us by the decisions of the American Courts and the opinions of American Jurists, whom accident has caused to anticipate us on this question. And, although the decisions of the American Courts are of course, not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own, entitle their decisions to the utmost respect and confidence on our part." *Scaramanga v. Stamp*, L.R. 5 C.P.D. 295, 303 (1880).

(69) See especially the judgment of Mukerjee, J., in *Jagat Tarini v. Nabagopal*, 5 C. L.J. 270=34 C. 305; See also cases cited in Note (66) *supra*.

(70) *Malcom v. Smith*, *George Taylor's Reports*, 1847 and 1848, p. 243 at p. 248=2 Indian Decisions, Old Series at p. 174.

(71) Per Sir L. Peel, C.J., in *Braddon v. Abbott*, *George Taylor's Reports*, 1847 and 1848, 342 at pp. 359, 360=2 Indian Decisions, Old Series, at p. 216.

He says : " It must not, however, be overlooked that the circumstances of this country are, in many respects, very different from those of England. Not only may there be in India rights to be protected which are unknown to English law, but interests of which it does take cognizance may here require protection by injunction, or otherwise in sets of circumstances in which it is not necessary to grant relief in England, or the converse may be the case. So in the matter of rules of procedure and practice, though the utmost respect should be paid to the wisdom and authority of English Courts, yet Courts in India are by no means bound to adopt all such rules as the Equity Courts in England may have established. Further as the mode of living in this country is different from that in England not only may such mode of life give rise to new rights, it may even in the case of such rights as are enforceable in both countries, present in particular cases new facts for consideration upon the question of the issue of an injunction or the assessment of damages.<sup>72</sup> So also in the matter of receivers the Court's decision may be affected by circumstances peculiar to this country. Thus in considering the question whether a power to a receiver to raise money on the property itself may be necessary to its own preservation, regard must be had to the conditions under which estates are held in India.<sup>73</sup> Again, English rules and decisions may, in particular cases, be inapplicable owing to the fact that the relations which existed between the Court of Chancery and the Courts of Common Law in England were very different from those between the High Courts and the mofussil Courts in India, as were also the respective functions and powers of these Courts. And though legislation may give to English Courts powers similar to those possessed by the Courts of this country, their discretionary exercise may here be different owing to circumstances peculiar to the former Courts existing anterior to such legislation. Lastly, where, as in certain instances, English law deals with rights peculiar to itself, their consideration is rendered here unnecessary; where, on the other hand, rights which require protection are peculiar to this country, English rules and decisions will be of service, if at all only by way of analogy; while as to such as are common to both countries differences both in procedure and substantive law may render these rules and decisions partially or wholly inapplicable."<sup>74</sup>

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(72) See Woodroffe's Law of Injunctions and the cases cited therein.

(73) Per Petheram, C.J., in *Poreshnath Mookerjee v. Omerto Nath Mitter*, 17 C. 614 (619).

(74) See Woodroffe's Law of Injunctions; See Law of Receivers by the same author, 2nd Ed., 1910, pp. 39-40; See also the judgment of Petheram, C.J., in *Poreshnat v. Omerto*, 17 C. 614 (619).

We have already seen that the jurisdiction exercised by our Courts in administering relief by the extraordinary remedy of appointing a receiver *pendente lite* is a branch of the general preventive jurisdiction of Courts of Justice, and is intended to prevent injury to the thing in controversy, and to preserve it for the security of all parties concerned in the litigation, to be disposed of as the Court may finally direct.<sup>75</sup> "The power is justly regarded as one of a very high nature and not to be exercised when it would be productive of serious injustice or injury to private rights.<sup>76</sup> The exercise of this extraordinary power is an exceedingly delicate and responsible duty, to be discharged by the Court with the utmost caution, and only under such special or peculiar circumstances as demand summary relief.<sup>77</sup> Indeed, the appointment of a receiver is regarded as one of the most difficult and embarrassing duties which a Court of justice is called upon to perform.<sup>78</sup> It is a peremptory measure, whose effect, temporarily at least, is to deprive of his property a defendant in possession, before a final judgment or decree is reached by the Court determining the rights of the parties.<sup>79</sup> It is therefore not to be exercised doubtfully, but the Court must be convinced that the relief is needful, and that it is the appropriate means of securing an appropriate end.<sup>80</sup> And since it is a serious interference with the rights of the citizen, before a regular hearing, it should be granted only for the prevention of manifest wrong and injury.<sup>81</sup> And because it divests the owner of property of its possession before a final hearing, it is regarded as a severe remedy, not to be adopted save in a clear case, and never unless plaintiff would otherwise be in danger of suffering irreparable

**Principles governing the appointment of receivers.**

**A p p o i n t m e n t to be made cautiously.**

(75) *Mays v. Rose*, Freem. Miss., 703

(76) Opinion of Frick, J., in *Speights v. Peters*, 9 Gill. 476; *Ashurst v. Lehman*, 86 Ala. 370, 4 So. 731.

(77) *Crawford v. Ross*, 39 Ca. 44; *Furlong v. Edwards*, 3 Md. 112. See *Shepherd v. The Trustees of the Port of Bombay*, 1 B. 132.

(78) Per Drummond, J., in *Bill v. New Albany, etc.*, R.C.O., 2 Biss. 390.

(79) *Whitehead v. Wooten*, 43 Miss., 523. The appointment of a receiver is a relief which, while certain to prove inconvenient may be also absolutely ruinous in its effects on the business of the party concerned; and therefore an application for it should be dealt with with the greatest caution and judicial discretion, 2 L.B.R. 222 (223).

(80) *Chicago v. Allegheny Oil and Mining Co. v. United States Petroleum Co.*, Pa. St. 83; S.C., 6 Philad., 521. *Shepherd v. The Trustees of the Port of Bombay*, 1 B. 132.

(81) *Crawford v. Ross*, 39 Ga. 44; See also *Srimati Prasonomoyi v. Beni*, 5 A. 556 = A.W.N., 1883, 136. *Nga Kyi v. Mi Sin*, U.B.R. 1908, 2nd Quarter, Civil Procedure, p. 17. In *Shanker v. Sadashiv*, 7 Bom. L.R. 925, it has been stated that it is the practice on the Original Side of the Bombay High Court, on an interlocutory motion, to require, before any order for injunction or receiver is passed, that the plaintiff makes a sufficient affirmative case a strong *prima facie* case to show that he is entitled to the relief which he seeks.

loss.<sup>82</sup> And since a receivership is a harsh and costly remedy, interfering seriously with the rights of persons in possession, Courts generally exercise extreme caution in the appointment of receivers and withhold the remedy until a proper case has been made therefor.<sup>83</sup> Consequently, a receiver is not to be appointed simply as a matter of course, and "because, it could do no harm to appoint a receiver."<sup>84</sup>

The main object of appointing a receiver is to provide for the safety of the property which is the subject-matter of a pending litigation and until the hearing of the cause,<sup>85</sup> for the management of the estate of infants during the period of their minority or to secure the due preservation of the property of lunatics, during the period of their incapacity and generally to preserve property in danger of being dissipated, or destroyed by those to whose care it is by law entrusted or by persons having an immediate but partial interest therein.<sup>86</sup> A receiver can generally be appointed for the purpose of getting in and securing funds which the Court at the hearing or in the course of the suit will have the means of distributing among the persons entitled to those funds.<sup>87</sup>

"The application for a receiver," says Mr. Justice Clayton in *Lenox v. Notrebe*, (Hemp 225) "is addressed to the sound discretion of of the Court, regulated by legal principles, and is exercised by the Courts upon many occasions with great benefit to the parties. It is particularly serviceable when there is danger that the subject-matter of controversy may be wasted<sup>88</sup> or destroyed, impaired,<sup>89</sup> injured or removed<sup>90</sup>

(82) *Pullan v. Cincinatti and Chicago, R. Co.*, 4 Biss. 47; *Hayes v. Jasper Land Co.*, 147 Ala., 340, 41 So., 909; See also *Must. Budhwanti v. Must. Bishen*, 59 P.L.R. 1902=73 P.R. 1902; *Kesar Devi v. Partab Singh*, 39 P.R. 1908=91 P.W.R. 1908=185 P.L.R. 1908.

(83) *Sult v. Hochsletter Oil Co.*, 63 West Va., 317, 61 S.E. 307. See High on Receivers, S. 3, pp. 6—7; See also Chap. on "Appointment of Receivers." *infra*.

The principal object of an injunction, is to prevent future injury, leaving matters as far as possible *in statu quo*, till the suit in all its bearings can be heard and determined; and the Court will grant it only when some strong case of substantial damage to the plaintiff, which would arise from simply allowing things to remain *in statu quo*, is made out. *Shepherd v. The Trustees of Port*, 1 B. 132.

(84) *Srimati Prosonomoyi v. Beni*, 5 A. 556=A.W.N. 1883, 136.

(85) *Tullet v. Armstrong*, 1 Keen 428; *Owen v. Homan*, 4 H.L.C. 1032; See *Pana v. Ana*, 8 Ind. Cas. 1191.

(86) See Bennett on Receivers, 2.

(87) *Evans v. Coventry*, 3 Drew, 80; See *Pana v. Ana*, 8 Ind. Cas. 1191.

(88) *Sia Ram v. Mahabir*, 27 C. 279=5 C.W.N. 362; *Sham Chand v. Bhaya Ram*, 5 C.W.N. 365; *Hanumayya v. Venkatasubbaya*, 18 M. 23; *Srimati Mathuria v. Shibdayal*, 14 C.W.N. 252=5 Ind. Cas. 27; *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=36 P.R. 1910=6 Ind. Cas. 659=72 P.L.R. 1910.

(89) *Ibid*.

(90) *Ibid*; See Chapter on "Grounds of appointment."

during the progress of the suit. The object is to secure the fund for the party found, upon final hearing, to be entitled, and to produce as little prejudice as possible to any of those concerned. When one party has a clear right to the possession of property, and when the dispute is as to the title only, the Court would very reluctantly disturb that possession.<sup>91</sup> But when the property is exposed to danger and to loss, and the party in possession has not a clear legal right to the possession, it is the duty of the Court to interpose and to have it secured."<sup>92</sup>

The only purpose of the appointment of a receiver being the preservation of the property and for its ultimate disposal according to the rights of the parties as finally determined by the order of the Court, it is regarded "as in the nature of a sequestration rather than as an attachment of the property." Consequently it does not generally give any advantage or priority to the person at whose instance the appointment is made, over other parties in interest.<sup>93</sup> So also the appointment does not vest the receiver with any title to the property in controversy. The effect of the appointment is merely to give him the right to the possession of the property without changing the title or creating any lien upon it.<sup>94</sup> In this respect, it rather resembles the remedy by way of injunction *pendente lite*, to preserve the subject-matter until the rights of all parties may be judicially determined than that of an attachment under an order of Court.<sup>95</sup>

The nature and effect of this extraordinary remedy are thus stated by Baldwin, J., in *Beverley v. Brooke*.<sup>96</sup> "By means of the

(91) As in the case of Hindu widow. See *Sivagnanathammal v. Arunachalam*, (1911) M.W.N. 75=21 M.L.J. 821; or Manager of Hindu family, *Sant Ram v. Ram Chand*, 36 P.R. 1910=53 P.W.R. 1910=6 Ind. Cas. 659.

(92) Per Clayton, J. in *Lenox v. Notrebe*, Hemp, 225. A receivership is one of those remedial agencies originally devised to preserve the fund or thing in controversy from removal beyond the jurisdiction, or from spoliation, waste or deterioration *pendente lite*, to the end that it may be appropriated as the final decree shall direct. *Myers v. Estell*, 48 Miss. 401. A Court of equity, by its order appointing a receiver, takes the entire subject-matter of the litigation out of the control of the parties and into its own hands, and ultimately disposes of all questions, legal or equitable, growing out of the proceeding as the justice of the case may require. *Beverley v. Brooke*, 4 Grat. 211. See Chapter on "Appointment of Receivers - Practice and Procedure"

(93) *Beverley v. Brooke*, 4 Grat. 187; *Ellis v. Boston, Hartford and Erie R. Co.*, 107 Mass. 1; *Southern Granite Co. v. Wadsworth*, 115 Ala. 570, 22 So. 157.

(94) *Southern Granite Co. v. Wadsworth*, 115 Ala. 570, 22 So. 157.

(95) *Ellis v. Boston, Hartford and Erie R. Co.*, 107 Mass. 1, High on Receivers, Chap. I; *Wilkinson v. Gangadhar*, 6 B.L.R. 486.

(96) Per Baldwin, J., in *Beverley v. Brooke*, 4 Grat. 187 at p. 208.



appointment of a receiver, a Court of equity takes possession of the property which is the subject of the suit, preserves it from waste or destruction, secures and collects the proceeds or profits, and ultimately disposes of them according to the rights and priorities of those entitled, whether regular parties in the cause, or only parties in interest coming before the Court in a seasonable time, and in due course of proceeding, to assert and establish their pretensions. The receiver appointed is the officer and representative of the Court, subject to its orders, accountable in such manner and to such persons as the Court may direct, and having in his character of receiver no personal interest but that arising out of his responsibility for the correct and faithful discharge of his duties. It is of no consequence to him how or when, or to whom, the Court may dispose of the funds in his hands, provided the order or decree of the Court furnishes to him a sufficient protection. The order of appointment is in the nature, not of an attachment, but a sequestration; it gives in itself no advantage to the party applying for it over other claimants<sup>97</sup>; and operates prospectively upon rents and profits, which may come to the hands of the receiver, as a lien in favour of those interested, according to their rights and priorities in or to the principal subject out of which those rents and profits issue. In the exercise of this summary jurisdiction, a Court of equity reverses, in a great measure, its ordinary course of administering justice; beginning at the end, and levying upon the property a kind of equitable execution, by which it makes a general instead of a specific appropriation of the issues and profits, and afterwards determining who is entitled to the benefit of its *quasi* process. But acting, as it often must of necessity, before the merits of the cause have been fully developed, and not unfrequently when the proper parties in interest are not all before the Court, it proceeds with much caution and circumspection, in order to avoid disturbing unnecessarily or injuriously legal rights and equitable priorities."

Is not decisive as to the ultimate rights of the parties, nor conclusive as to the merits.

From what we have seen regarding the purpose and object usually had in view in the appointment of a receiver *pendente lite*, it necessarily follows that the remedy is a provisional or auxiliary one, invoked as an adjunct or aid of the principal relief sought by the action and never as the ultimate object of the suit.<sup>98</sup> And the appointment

(97) The appointment of the receiver is made for the purpose of preserving the property in controversy in *statu quo*; and this is as much for the benefit of the party who opposed his application as for the benefit of the party who asked for his appointment. See *Poresh-nath Mookerjee v. Omerto*, 17 C. 614 (616) cited in Note (22) *supra*.

(98) As a rule the Court cannot appoint a receiver unless there is a *lis pendens*. *Salter v. Salter*, 1896, p. 291, C.A. In the case of *Ex parte Whitfield* it has been held that unless there is a pending cause, no receiver can be appointed. But as to the Indian Law, see O. XL, r. 1 of the Civ. Pro. Code, 1908.



of receiver is never allowed to have any effect on the ultimate decision of the case. In fact the granting of an application for receivership should not have the effect of prejudging the case. The application may succeed or fail, and yet in no manner would it affect the principal controversy or determine the final result.<sup>99</sup>

The appointment of a receiver pending suit, therefore, like the granting of a temporary injunction, is not an ultimate determination of the right or title, and the Court, in disposing of the application, in no manner decides the questions of right involved, nor anticipates its final decision upon the merits of the controversy. The only consideration for the Court in disposing of the application should be merely to take charge of the property or fund in litigation for the benefit of whoever may be determined in the end to be entitled thereto.<sup>100</sup> The decision upon the application for a receiver *pendente lite* is, therefore, without prejudice to the final decree which the Court may be called upon to make. As a matter of practice, the Court expresses no opinion as to the ultimate questions of right involved. And if the plaintiff presents a *prima facie* case, showing an apparent right or title to the thing in controversy, and that there is an imminent danger of loss without the intervention of the Court, the relief may be granted without going further into the merits upon the preliminary application.<sup>101</sup>

(99) *Barber v. International Co.*, 73 Conn., 587, 48 Atl. 758, see High on Receivers, S. 6, pp. 9–11.

(100) *Huguenin v. Baseley*, 13 Ves. 106; *Cooke v. Gwyn*, 3 Atk. 689.

(101) *Levitt v. Yates*, 4 Eq. Ch. 162; *Brown v. Northrup*, 15 Ab. Pr. N.S. 333; In this connection the following observations of Justices Rampini and Pratt of the Calcutta High Court may also be noted :—" We think, after consideration of all these affidavits and of the circumstances of the case, that a sufficiently strong case—we may say a *very* strong case—has been made out by the plaintiff to justify the appointment of a receiver in this case. Although we are far from wishing to prejudge the case in any way, we certainly think a fair *prima facie* case has been shown to exist on the side of the plaintiff. But, as we have said, we do not wish to prejudge the case; and we must here point out that no evidence on oath has been given. There are nothing but affidavits to go upon: and therefore the view we take on these affidavits may entirely be set aside when the witnesses are cross-examined,—as cross-examined they will be,—before the Subordinate Judge at the trial. *Sia Ram Das v. Mohabir Das*, 27 C. 279 (282)=5 C.W.N. 362. The following remarks of Rampini, J., in *Ram Sunder Dass v. Kamal Jha*, 32 C. 741 at pp. 744–745 may also be noted :—" We do not think it necessary to follow the learned Counsel in the discussion of these documents. On the contrary we think it inadvisable to do so at this stage. Such a course, when the appointment of a Receiver is under consideration is always regarded as undesirable and as tending to prejudge the case and prejudice the parties. For these reasons we abstain from dealing with the documents; and it is sufficient for us to say that we are of the same opinion as the Subordinate Judge and the District Judge, who are both, as local authorities, in a far better position to judge as to whether it is desirable in this case to appoint a Receiver or not." *Ram Sunder Dass v. Kamal Jha*, 32 C. 741 at pp. 744–745. The following remarks of Lindlay, M.R., in *John v. John*, L.R., 1898, 2 clo. 573 (578), may also be noted : " I do not believe in the title of the defendant. I cannot decide in the present proceeding that she has

As a matter of principle, in dealing with any application, the Court is bound to express its opinion only to the extent necessary, for the determination of the question before it. Hence in a receivership application, the proper course would be for the Court only to express so

no title, and it may be on the hearing I shall be converted, but at present I do not believe in her title. Under these circumstances, believing in the title of the plaintiff and not believing in the title of the defendant and seeing that the events are in jeopardy, it appears to me that it would be wrong to refuse a receiver." *John v. John*, L.R., 1898, 2 clo. 573 (578) cited in *Mussammatt Budhwanti v Mussammatt Bishen Kour*, 59 P.L.R. 1902=73 P.R. 1902. The following remarks of Straight and Tyrrell, JJ., in an Allahabad case are to the same purpose:—"Without in any way anticipating the result of the suit in the course of which the order now before us in appeal has been made, we cannot but suspect that the plaintiffs have put forward their claim in an inflamed and exaggerated form, and we entertain very grave doubts as to whether the application for a receiver was made with any other object than to cause annoyance." Per Straight and Tyrrell, JJ., in *Srimati Prosonomoyi v. Beni*, 5 A. 556 (561)=3 A.W.N. 136. The following remarks of Macpherson and Gordon, JJ., may also be noted:—

"It is necessary, therefore, to consider the circumstances under which the claim is made, the evidence by which it is supported for the purpose of this application, and the conduct of the parties. Our observations are of course based on the limited materials before us, and can have no effect on the ultimate decision." Per Macpherson and Gordon JJ., in *Sidheswari Dabi v. Abboyeswari Dabi*, 15 C. 818 at p. 823=13 Ind. Jur. 258. In the case of *Raja Ram v. Thakurain*, 7 Ind. Cas. 344 (345), Knox, J., says "So far as we could see without prejudging the case etc."

The following are the remarks of Lindlay, M.R., in *John v. John*, L.R. 1898, 2 clo., 573 (578). "I do not believe in the title of the defendant. I cannot decide in the present proceedings that she has no title, and it may be on the hearing I shall be converted, but at present I do not believe in her title. Under these circumstances, believing in the title of the plaintiff and not believing in the title of the defendant and seeing that the rents are in jeopardy, it appears to me that it would be wrong to refuse a receiver." These remarks were concurred in by L.JJ. Chitty and Collins, and appear to us to be exactly applicable here, and we adopt practically the same line of reasoning when we say that, plaintiff's title is *prima facie* clear. *Mussammatt Budhwanti v. Mussammatt Bishen Kour*, 59 P.L.R. 1902=73 P.R. 1902. (See the judgment of Chatterjee, J.)

The effect of the appointment of a receiver would not be to prejudge the case in any way, as the only object and effect of so doing would be to maintain the estate in its present condition during the pendency of the suit. *Kumar Satya Narain Singh v. Srimati Rani Keshabati Kumari*, 18 C.W.N. 537.

The same principles have been held to apply to the case of a temporary injunction. The practice of the Courts in England is also the same. The Court in England, upon the application for an interlocutory injunction or appointment of a receiver will deal with the matter upon the evidence before it, and will confine itself strictly to the immediate object sought, and as far as possible abstain from prejudging the question in the cause. (*Skinnners Co., v. Irish Society*, 1 M. & C. 162). If a fair *prima facie* case be made out, and the case is free from objections of an equitable consideration, several courses are open to the Court. Which of them will be adopted is always a matter for the discretion of the Court, but, in the absence of special circumstances, the leading principle which is the rule of the Court and which limits its discretion is, that only such a restraint shall be imposed on relief granted as may stop the mischief complained of, and keep the property in its actual condition until the hearing. *Blakemore v. Glamorganshire Railway Co.*, 1 M. & K. 154; Kerr on Injunctions, 3rd Ed., pp. 24—25.

much of its opinion regarding the facts of the case as would show the necessity for granting or rejecting the application and no further.<sup>102</sup>

Thus in a suit <sup>103</sup> to set aside a trust deed transferring certain securities, in which a motion was made for an injunction and for the appointment of a receiver to take charge of the securities *pendente lite*, McConn, Vice-Chancellor, observed as follows:—"The argument has embraced all the points which the pleadings are calculated to present when the cause shall be brought to a hearing for a final decree but it does not follow that a decisive opinion is to be expressed in this stage of the cause upon the rights of all the parties; for, whatever may be the result of a motion of this kind, the general understanding is that it is without prejudice to the ultimate decision which the Court may be called upon to make. Insolvency and danger to the fund pending the litigation, with a *prima facie* case and probable cause for sustaining the bill, are or ought to be sufficient in the first instance to found an injunction and a receivership upon, without going minutely into the merits. My own observation has taught me that; in general, it is most prudent and best promotes the ends of justice to go no further upon the motion."

It is a general rule that whenever a relief is sought for in a Court of law, a statement of claim should be made stating the material facts upon which the plaintiff relies. Every statement of claim should also specifically mention the relief which the plaintiff claims, either simply or in the alternative.<sup>104</sup> The same cause of action may entitle the plaintiff to relief of different kinds. Or he may be entitled to some relief or reliefs as the main object of the suit and some other reliefs as subsidiary or auxiliary ones. Thus, the plaintiff in addition to claiming the payment of a debt or damages, may also ask for one or more of the following kinds of relief.

- i. An Injunction.
- ii. A Mandamus.
- iii. Declaration of right or title.
- iv. *The appointment of receiver.*
- v. An account.
- vi. Delivery of specific property.
- vii. Specific performance of contract, etc.<sup>105</sup>

The Code of Civil Procedure directs that a receiver may be appointed where it appears to the Court to be "just and convenient." Hence such facts should be alleged, and at least *prima facie* proof of

(102) *Skinnners Company v. Irish Society*, 1 Myl. & Cr. 162.

(103) *Laavitt v. Yates*, 4 Edw. Ch. 162.

(104) See Civ. Pro. Code (1908), O. VI, r. 2.

(105) See Odgers on Pleadings, 7th Ed., 1912, pp. 203—205.

the same offered, before an order for a receiver can be made. It will be generally necessary to show, (i) that there was a title in possession or expectancy in the plaintiff and (ii) that there was danger to the property,<sup>106</sup> and thirdly also (iii) that the damage likely to be caused to plaintiff thereby would not be adequately compensated by way of damages.<sup>107</sup>

(106) *Satoor v. Satoor*, 2 M.H.C. 8 (10).

The following observations of the Court in the course of the judgment may also be noted: "This plaint is in truth in the nature of a bill *quia timet*, and to support such bills Sir John Leech in *Fisher v. Hughes*, Cooper's Rep. temp. Cottenham 326, 330, says, first, there must be a title in possession or expectancy in the plaintiff, and, secondly, there must be danger to the property. Now, as I have already said, this is the case, not of a legatee suing for a legacy, nor of a suit for administration or an account in which as incident to the other relief sought, the Court may properly require the fund to be secured pending the litigation and for the purpose of carrying out conveniently its own orders respecting the fund. But this is a suit respecting a fund devoted, as I infer, in some way to the relief of poor Armenian orphans, in which the plaintiff has no interest except as a member of the Armenian community—a suit to which the Advocate General is no party, and in which the only relief prayed is the payment of the money into Court. That being so—although the defendants, the Governors of the charity, offer no opposition to the decree for which the plaintiff prays—I do not feel myself at liberty to make such a decree. The Governors could not, I apprehend, of their own accord, from a desire to be relieved of responsibility, come and deposit the trust-fund in Court—the English Trustee Relief Acts not having been extended to this country; and their acquiescence in the plaintiff's prayer is not, I think, sufficient to relieve me from considering whether it ought to be granted. This is a Court of Justice. The administration of justice is the purpose of its establishment; and though in numerous cases the protection of property which is the subject of litigation, by requiring it to be brought into Court, is an important part of its jurisdiction, I do not think that it ought to hold itself out as a Bank in which charity-funds may at pleasure be deposited. *Satoor v. Satoor*, 2 M. H.C. 8 (10). In exercising the power to appoint a receiver, the Court has a discretion which is governed by the circumstances of the case, and where one party is in possession, the Court will not act unless the other party has shown a *prima facie* title." *Dero H.H. Mir Husseinalikhan v. H.H. Mir Abdul Hussein Khan*, 1 S.L.R. 121.

(107) As to when the damage or injury is deemed to be not capable of being adequately compensated by way of damages, see Kerr on Injunctions, 3rd Ed., pp. 14-15, and chapter on "Practice and Procedure" *infra*. In determining whether it shall appoint a receiver, the Court deals with the case as it appears upon the pleadings and evidence, and stands on the record (*Silver v. Bishop of Norwich*, 3 Sw. 116, *n.*; *Skimmers' Company v. Irish Society*, 1 My. & Cr. 164). If the Court is satisfied upon the materials it has before it that the party who makes the application has established a good *prima facie* title, and that the property the subject-matter of the proceedings will be in danger, if left until the trial in the possession or under the control, (*Cummins v. Perkins*, 1899, 1 Ch. 16; *Leney & Sons, Ltd. v. Callingham*, 1908, 1 K.B. 79) of the party against whom the receiver is asked for (*Evans v. Coventry*, 5 D.M. & G. 918), or, at least, that there is reason to apprehend that the party who makes the application will be in a worse situation if the appointment of a receiver be delayed (*Aberdeen v. Chitty*, 3 Y. & C. 382; *Thomas v. Davies*, 11 Beav. 29) the appointment of a receiver is almost a matter of course. (See *Middleton v. Dodswell*, 13 Ves. 266; *Oldfield v. Cobbett*, 4 L.J. Ch. N.S. 272; *Real and Personal Advance Co. v. Macarthy*, 27 W.R. 706). If there is no danger to the property, and no fact is in evidence to show the necessity or expediency of appointing a receiver, a receiver will not be appointed, unless there be some other equity in the case to support the application (*Whitworth v. Whyddon*, 2 Mac. & C. 55; *Wright v. Vernon*, 3 Drew. 121; *Micklethwaite v. Micklethwaite*, 1 D. & J. 530). The mere allegation of danger to the property is not sufficient, if the

Where the Court finds from the facts on the record that there is a case for the appointment of a receiver, it will not allow its hands to be tied up by mere formal objections, as for instance that the record is not perfect as to particulars, or that it is not in proper form, or that it would be necessary to place it in proper order in order to administer complete justice. Where the objection is only a formal one, and such as may be set right by amendment, the Court will not suspend its protective action, on account of such objection. Thus, all the necessary parties may not be before the Court, the suit may be bad for misjoinder of parties, or there may be misjoinder of parties and causes of action as well, and yet, if the Court finds that a receiver would be necessary on grounds of justice and convenience, an order for his appointment would be made.<sup>108</sup>

Again it is not even necessary that the plaintiff should ask for the appointment of a receiver in specific terms. Thus, the Court would, in a proper case appoint a receiver even though the plaintiff has not asked for one in his plaint or statement of claim.<sup>109</sup>

This is granted under the prayer for general relief which is generally contained in every plaint, and which though not specifically asked for in the plaint are deemed to be contained therein. In fact, it is not even necessary to ask for this general or other relief, for this "may always be given, as the Court or a Judge may think just, to the same extent as if it has been asked for".<sup>110</sup>

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Court is satisfied that no loss need be apprehended. (*Whitworth v. Whyddon*, 2 Mac. & C. 55). If, however, it be the true and necessary result of the pleadings, as they stand, that the property is in danger, or that loss may be apprehended, there is a case for a receiver. (*Evans v. Coventry*, 5 D.M. & J. 917). See Kerr on Receivers, Sixth Ed., 1912, Ch. I, pp. 7-9.

(108) *Evans v. Coventry*, 5 Dec. M. & G. 911.

(109) See *Salt v. Cooper*, 16 Ch. D. 544; Odgers on Pleadings, 7th Ed., 1912, p. 205. For a case where a receiver was appointed by the Court of its own motion, see *Bidya Prosad v. Asrafi Singh*, 17 C.W.N. 1070=20 Ind. Cas. 269=40 C. 862; *Dan Prosad v. Gopi*, 11 A.L.J. 973. But see also *Mussammatt Bakht Bhari v. Isa Shah*, 62 P.W.R. 1911. So also a receiver can be appointed by the court on an *ex parte* motion. See *Ranganayaki Ammal v. Mahali Pillay*, 4 L.B.R. 356. But see also *Jiwani v. Labhu Ram*, 107 P.R. 1908.

It is not necessary that the appointment of a receiver should have been claimed in the plaint or even by the statement of claim, (*Malcolm v. Montgomery*, 1824, 2 Mol. 500; *Osborne v. Harvey*, 1841, 1 Y. & C. Ch. Cas. 116), unless such appointment is a substantial part of the relief sought. (*Colebourne v. Colebourne*, 1876, 1 Ch. D. 690). Leave to amend the pleadings will be given if necessary. (*Re Lloyd, Allen v. Lloyd*, 1879, 12 Ch. D. 447). Similarly a receiver may be appointed in the Court of Appeal, though the appointment has not been asked for in the Court below. (*Chaplin v. Young*, 1862, 6 L.T. 97; *Hyde v. Warden*, 1876, 1 Ex. D. 309, C.A.). See also Halsbury's Laws of England, Vol. XXIV, 1912, S. 634, p. 345.

(110) See Civil Procedure Code (Act V of 1908), O. VII, r. 7; Rules of the Supreme Court in England, O. XX, r. 6; Odgers on Pleadings, 7th Ed, 1912, p. 204.



The Court has jurisdiction to appoint a receiver in all cases in which it appears to it to be just or convenient to make such an order, although the defendant may be in possession of the property ;<sup>111</sup> and the Court will give the receiver possession of the property so far as is necessary for the preservation of the plaintiff's rights.<sup>112</sup>

If a receiver is claimed generally, it is open to the Court to grant the claim so far as is proper or in a limited form.<sup>113</sup>

A receiver may be appointed if there are grounds for such appointment, although the application was made only for an injunction and did not specifically ask for a receivership.<sup>114</sup>

An application for the appointment of receiver should ordinarily be made by a separate petition supported by affidavit, and should not be embodied in the plaint. The mere fact that the plaint is verified and sets out the facts even to the most minute particulars will not do. A separate petition would generally be required.<sup>115</sup>

The Code of Civil Procedure directs, that the costs of a suit or an application shall be in the discretion of the Court.<sup>116</sup>

**Costs.** But there are certain broad principles established by decided cases, which it may be useful to refer in the exercise of such discretion.

In the first place, the Court may make its order as to the costs of the receivership application either at the time when it disposes of the application,<sup>117</sup> or it may order that the costs of the application to be costs in the suit.<sup>118</sup>

In cases of contested applications for receivership, where the Court's order does not contain any specific direction as to the costs of the application, the successful party would be entitled to these costs as costs

(111) Judicature Act, 1873, s. 25, sub-s. 8; *Gwatkin v. Bird*, 52 L.J.Q.B. 263; *Foxwell v. Van Grutten*, 1897, 1 Ch. 64; *John v. John*, 1898, 2 Ch. 573; *Cummins v. Perkins*, 1899, 1 Ch. 16. Odgers on Pleadings, 7th ed., 1912, p. 205.

(112) *Charrington and Co., Ltd. v. Camp*, 1902, 1 Ch. 386.

(113) *Major v. Major*, 8 Jur. 797.

(114) See *Whitney v. Buckman*, 27 Cal. 447 (American). See also *Chandidat Jha v. Padmanand Singh*, 22 C. 459, where the application was for the appointment of receiver and the lower Court granted it, the appellate Court set it aside and granted an order for temporary injunction although the plaint did not specifically ask for the latter remedy. See *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973, where the application was for a temporary injunction and the court granted a receivership.

(115) *Gorid Dut v. Perushaw Sorabshaw*, 2 L.B.R. 222.

(116) See S. 35 of the Code of Civil Procedure, 1908 (Act V of 1908).

(117) *Goodman v. Whitcomb*, 1 J. & W. 593; *Wilson v. Wilson*, 2 Keen. 249; *Wood v. Hitchings*, 4 Jur. 858.

(118) *Hewett v. Murray*, 54 L.J. Ch. 572; *Tillett v. Nixon*, 25 Ch. D. 238.



in the action. If the application for receivership be not opposed, the costs of both parties are costs in the action.<sup>119</sup>

Where a party adopts an unnecessarily costly procedure for getting an order for the appointment of a receiver, the costs occasioned by such costly procedure would be disallowed although the application may be granted. Only such costs would be allowed as he would be entitled to, if he had proceeded by the less costly method.<sup>120</sup>

A party who succeeds in getting the appointment of a receiver *pendente lite* may have to pay the costs, notwithstanding such success, if on the trial of the action it is decided that the action in which the receiver was appointed ought not to have been brought.<sup>121</sup>

A party who conducts his own case, and causes a receiver to be appointed against him by reason of not putting his facts properly before the judge, may be disallowed his costs if the appointment is upset on appeal.<sup>122</sup>

(119) See *Corcoran v. Witt*, L.R. 13 Eq. 53; *Cowp. Grinston v. Trimms*, 8 W.R.747, 781, Annual Practice, Note to O. LXV, r. 23

(120) *Barr v. Harding*, 36 W.R. 216 (Eng.) *Re. Francke*, W.N. 1898,69; See also *Mohomed Medhi v. Zoharra Begum*, 17 C. 285 at 288 where it was held that the court ought to adopt the least expensive course.

(121) *Barton v. Rock*, 1856, 22 B. 376.

(122) *Hall v. Hall*, 1850, 3 Mac. & G. 79. If a receiver is appointed by the Court, and a new receiver is afterwards appointed in his place, the solicitor who obtained the appointment of such second receiver is entitled to a first lien for his costs over the rents received after such second appointment in priority to other claims. *Re Knight*, 1892, 2 Ch. 368.

## CHAPTER II.

### APPOINTMENT OF RECEIVER COMPARED WITH RELIEF BY WAY OF TEMPORARY INJUNCTION.

Receiver and injunction are granted by way of preventive or precautionary relief.

Both are forms of specific relief.

Both belong to the branch of adjective law or law of procedure and are governed by the Civil Procedure Code.

Both remedies are prospective rather than retrospective in their operation.

Both are extraordinary remedies.

Neither remedy has the effect of changing title.

Both the remedies are merely discretionary.

Both are provisional or auxiliary remedies and do not determine ultimate rights of parties.

Under the English practice neither remedy granted when relief may be had at law.

Delay, a bar to either relief.

Long acquiescence a bar to either form of relief.

Appointment of receiver operates as an injunction against the parties, their agents and representatives.

Principal difference between the two remedies consists in effect on possession of the property in dispute.

Distinct nature of the remedies—Each is not a necessary incident of the other—No receiver where injunction affords ample protection.

Cases where temporary injunction can be issued and where receiver is appointed—Difference.

Neither remedy applicable to determine disputed questions of title to public offices.

Neither remedy applicable to interfere with public duties of a department of Government, &c.

Neither remedy applicable in matters merely criminal or immoral.

Neither remedy applicable in merely political matters.

Injunction sometimes granted to protect possession of receiver.

Injunction sometimes granted against receiver.

WE have already seen that the remedy by way of appointment of receivers belongs to the branch of preventive or precautionary reliefs rather than to that of relief by way of compensation or restoration.<sup>1</sup> There is another and an equally important remedy—remedy by way of temporary injunction—which also belongs to this branch of preventive relief. The two remedies have very many

Receiver and injunction are granted by way of preventive or precautionary relief.

(1) See Chap. I, *supra*.

features common to them. Both aim at the prevention of similar mischief. The two remedies being so similar in their nature it would be necessary, to enquire, when resort can be had to the one or the other, in what respects they differ, if both these remedies can be granted at the same time, what effect each of these reliefs has on the property which is the subject-matter of the litigation and on the parties to the suit.

**Both are forms of specific relief.** Both the remedies are granted by way of "specific relief." Section 5 of the Specific Relief Act, which declares the modes in which Specific Relief is given declares that "specific relief is given,

- (i) by taking possession of certain property and delivering it to a claimant ;
- (ii) by ordering a party to do the very act which he is under an obligation to do ;
- (iii) by preventing a party from doing that which he is under an obligation not to do ;
- (iv) by determining and declaring the rights of the parties otherwise than by an award of compensation, or,
- (v) by appointing a receiver."

Section 6 of the same Act declares that specific relief under cl. (iii) cited above is called preventive relief.<sup>2</sup> The subject of receivers is further dealt with by this Act in S. 44, and the subject of injunction is dealt with in greater detail, under the heading of "Preventive Relief" in Ss. 52—57 of the Act.

**Both belong to the branch of adjective law or law of procedure and are governed by the Civil Procedure Code.** Both these subjects are branches of the Law of Procedure and are governed by the provisions of the Code of Civil Procedure, 1908,<sup>3</sup> as to the manner in which those reliefs are administered. Both are dealt with as merely provisional or auxiliary remedies, as opposed to some other main or permanent relief sought for in the suit.

**Both remedies are prospective rather than retrospective in their operation.** As we have already seen, both the remedies are alike branches of the general preventive jurisdiction of Courts of Equity.

From what has been stated above, it necessarily follows that both are prospective rather than retrospective in their operation ; and are invoked for the prevention of future injuries rather than for the redress

(2) This in effect is the purpose of a temporary injunction.

(3) The subject of injunctions is dealt with in O. XXXIX and the subject of receivers in O. XL of the Code of Civil Procedure, 1908. Under the Code of 1882, the appointment of receivers as well as the granting of an application for a temporary injunction were dealt with under the same heading of "Provisional Remedies." See Act XIV of 1882, Part VI.

of grievances already committed. The object of a temporary injunction is generally to preserve the subject in controversy in its then condition. It does not determine the question of right involved. It only seeks to prevent the further perpetration of the wrong, or the doing of any threatened act which may result in injury to the rights of the party asking for the relief.<sup>4</sup> Similarly the object of appointing a receiver *pendente lite* is to prevent injury to the thing in dispute in the suit, and to preserve it in a proper condition for the benefit of all the parties to the suit, that it may be disposed of according to the final decree of the Court.<sup>5</sup>

Both belong to the class of what are called "extraordinary remedies" as distinguished from the ordinary modes of procedure ; because they seek to control the subject-matter of the litigation *in limine*, and without awaiting the final determination of the suit.<sup>6</sup>

Both are "extraordinary remedies." Both are "extraordinary remedies." Neither remedy has the effect of changing title. So also, neither of these remedies has any effect on the title of the parties, nor do they create any special lien upon the property; the common object of both the remedies being only to secure the preservation of the subject-matter of the suit until the rights of all parties may be fully ascertained and judicially determined.<sup>7</sup>

Both the remedies are merely discretionary. The grant of each of these remedies rests in the discretion of the Court, and the granting or refusing of them is governed by a consideration of all the circumstances of the case.<sup>8</sup>

A further point of resemblance between these two forms of remedies is to be found in the fact that they are both of a provisional or auxiliary nature, and they are often sought for merely as an adjunct to some other principal relief asked for in the suit. The ultimate or principal object of the action is always something else than the appointment of receiver or the granting of temporary injunction.<sup>9</sup>

(4) See *Murdock's case*, 2 Bland. 461 ; see Chap. I, *supra*.

(5) *Mays v. Rose*, Freem (Miss.) 703 ; see Chap. I, *supra* ; *Gomes v. Carter*, 1 Ind. Jur. N S. 411. Injunction is granted not merely for preventing the recurrence, but also to prevent the occurrence of injury. *Bindu v. Jahnabi*, 24 C. 260 ; *Chandra v. Sree Govind*, 6 C.W.N.308 ; see also *Shepherd v. The Trustees of the Port of Bombay*, 1 B. 132, where it was stated that "the principal object of an injunction, is to prevent future injury leaving matters as far as possible in *statu quo* till the suit in all its bearings can be heard and determined."

(6) See High on Receivers, Chap. XVII.

(7) *Ellis v. Boston*, 107 Mass. 1 ; *Mun Mohinee v. Ichamoyee*, 13 W.R. 60 ; *Shepherd v. The Trustees of the Port of Bombay*, 1 B. 132.

(8) *Jiwani v. Labhu Ram*, 107 P.R. 1908=12 P.L.R. 1909=4 Ind. Cas. 674 (following 5 A. 561 ; 15 C. 818 ; 73 P.R. 1902). See Chap. I, *supra*. As to grant of injunction being in the discretion of Court, see *Seenichettiar v. Santhanathan*, 20 M. 58 (F.B.)=6 M.L.J. 281.

(9) See *Siaram Das v. Mohabir Das*, 27 C. 279 (282).

Indeed when the Court finds that there is a *prima facie* title in the applicant and imminent danger of the property being wasted, the Court should grant the application. It ought not to proceed further; because further investigation might in a way have the effect in prejudging the case.<sup>10</sup>

We have already seen (in Chap. I) that the appointment of receivers as well as the granting of temporary injunction was originally made in England by the Court of Chancery for the advancement of justice in cases where the remedy to be obtained in the Courts of ordinary jurisdiction was inadequate for purposes of substantial justice.<sup>11</sup>

Consequently it follows that where the remedy by the ordinary Courts was sufficient, the necessity for granting this extraordinary remedy ceases. Hence Courts of Equity would as a rule refuse to extend the aid of receiver or the granting of an injunction in all cases where the aggrieved party may obtain sufficient redress in the usual course of proceedings at law.<sup>12</sup>

This difference between the jurisdiction of Courts of Law and Courts of Equity do not however obtain in India. These are peculiar to the English law and those laws that have modelled their procedure on the Laws of England.

So also wilful omission to seek the aid of legal tribunals at the proper time when the party had the opportunity of doing so disentitles him to obtain relief in equity.<sup>13</sup>

Long and unexplained acquiescence in a particular grievance and delay in bringing the suit are usually regarded as a bar to relief in equity.<sup>14</sup> Hence neither an application for receiver nor one for a temporary injunction will be granted if the applicant has been guilty of unexplained delay. So, also, if a party loses his remedy at law by the

(10) See *Siaram Das v. Mohabir Das*, 27 C. 279 (282).

(11) See Chap. I, Note (12).

(12) *Sollory v. Leaver*, L.R. 9 Eq. 22. See *Kisho Prasad v. Srinivasa*, where it was held where a plaintiff had adequate remedy by way of execution of decree he would not be entitled to an injunction. See 13 C.L.J. 394=38 C. 791=10 Ind. Cas. 256.

(13) *Topp v. Rankin*, 9 Leigh, 478; See *Srimati Mathuri v. Shibdayal*, 14 C.W.N. 252 (255)=5 Ind. Cas. 27. It is open to the court to refuse an injunction where the state of things complained of is the outcome of the plaintiff's own conduct, and where he does not satisfy the court that his own acts and dealings in the matter have been fair and honest. *Seeni Chettiar v. Santhanathan*, 20 M. 58 (F.B.)=6 M.L.J. 281. The party must apply for injunction at the earliest opportunity. *Singaram v. Indra Nath*, 10 C.W.N. 173; See also *Gomes v. Carter*, 1 Ind. Jur. N.S. 411.

(14) *Gray v. Chaplin*, 2 Russ. 126.

expiry of the period of limitation, he cannot seek the aid of equity by alleging the same grounds which he should have asserted and proved in the Courts of Law.<sup>15</sup>

**Appointment of receiver operates as an injunction against the parties, their agents and representatives.**

The appointment of receiver generally operates as an injunction restraining the parties, their agents and representatives from interfering with the possession of the receiver except with the permission of the Court.<sup>16</sup>

The appointment of a receiver always more or less includes an order for an injunction<sup>17</sup>, and an appointment by way of equitable execution has the effect of an injunction to restrain the judgment-debtor from himself receiving the moneys over which the receiver is appointed, and prevents the debtor from dealing with the moneys to the prejudice of the judgment-creditor<sup>18</sup>; and it also prevents any subsequent judgment-creditor from gaining priority over the creditor obtaining the order.<sup>19</sup>

We have so far examined the essential points of resemblance between the granting of a receivership application and one for temporary injunction. But there are important points of difference between these two remedies. The most striking point of difference is to be found in their effect upon the possession of the property which is the subject-matter of the suit. By means of an injunction the Court does not take the property out of the custody and control of any party. But in appointing a receiver, the Court directly and

**Principal difference between the two remedies consists in effect on possession of the property in dispute.**

(15) *Drewry v. Barnes*, 3 Russ. 94. As to delay disentitling a person to relief by way of appointment of receiver, see *Srimati Mathuri v. Shibdayal*, 14 C.W.N. 252 (255)=5 Ind. Cas. 27; *Nga Kyi v. Mi Cin*, U.B.R. 1908, 2nd Qr. Civ. Pro. Code, 17; *Seeni v. Santhanathan*, 20 M. 58 (F.B.)=6 M.L.J. 281.

(16) See *Mahommed Zohoruddeen v. Mahommed Nooroodeen*, 21 C. 85 (91).

(17) *Evans v. Coventry*, 1854, 5 D.M. & G. p. 916. See form of the order of appointment of receiver cited in the Appendix *infra*.

(18) *Tyrrell v. Painton*, 1895, 1 Q.B. p. 206; *Brown, Janson & Co. v. Hutchinson & Co.*, 1895, 1 Q.B. p. 739; *Re Marquis of Anglesey*, 1903, 2 Ch. 727.

(19) *Re Galland*, 1886, W.N. 96; *Re Marquis of Anglesey*, 1903, 2 Ch. 727; *Ideal Bedding Co., Ltd. v. Holland*, 1907, 2 Ch. p. 170. The appointment of a receiver operates as an injunction, *Tyrrell v. Painton*, 1895, 1 Q.B. p. 206, per Lindlay, L.J.; *Ideal Bedding Co. v. Holland*, 1907, 2 Ch. 157; *Ex parte Peak Hill Goldfield*, 1909, 1 K.B. 430. An order for an injunction is always in a sense included in an order for a receiver. It is not necessary, if a receiver be appointed, to go on and grant an injunction in specific terms; but in cases where persons in a fiduciary character have misconducted themselves, the Court will often grant an injunction as well as a receiver, not because an injunction is necessary to prevent a party from receiving when a receiver is once appointed, but for the purpose of marking its sense of the conduct of the parties who have misconducted themselves. *Evans v. Coventry*, 3 Drew. 82.



immediately takes the property from the party previously in possession, assumes and continues to hold it in its own possession, through its officer, until the rights of all the parties to the suit are finally determined by its decree.<sup>20</sup>

An injunction merely restrains action, and aims at preserving the subject-matter, as well as the attitude of all parties in interest thereto, in *statu quo*; while a receivership changes at once the attitude of all parties towards the subject-matter of the litigation. It diverts the parties of possession and interposes the officer of the Court as a custodian of the property or fund, for the common benefit of all parties concerned.<sup>21</sup> Hence it has been said that an injunction does not operate to change possession whereas a receivership always does and necessarily changes possession.

Distinct nature of the remedies—each is not a necessary incident of the other—No receiver where injunction affords ample protection.

The appointment of receiver is not the same as the granting of an injunction; nor does the one remedy necessarily follow from the other. The two remedies are distinct in their nature. As stated by the Vice-Chancellor in *Hall v. Hall* "the rights to these different remedies are essentially distinct, and depend upon totally different grounds and circumstances."<sup>22</sup>

No doubt there are cases where an injunction follows a receivership almost as a matter of course.<sup>23</sup>

There are also cases where a receiver is a necessary incident to an injunction.<sup>24</sup>

It also frequently happens that the Courts are called upon to administer both remedies in one and the same action at one and the same time.<sup>25</sup> Or the Court may sometimes, with a view to mark its

(20) *Murdock's Case*, 2 Bland. 461; See also *Kesho Prasad v. Srinivas*, 13 C.L.J. 394=10 Ind. Cas. 256=38 C. 791.

(21) See *Gomes v. Carter*, 1 Ind. Jur. N.S. 411; *Shepherd v. The Trustees of the Port of Bombay*, 1 B. 132; See also *Kesho v. Sreenivasa*, 13 C.L.J. 394=38 C. 791=10 Ind. Cas. 256; High on Receivers, S. 739, p. 882; "Specific performance is directed to compelling performance of an active duty, while injunction (though sometimes in a subsidiary way requiring an act to be done) is generally directed to preventing the violation of a negative one. This difference, however, is very great. The remedy of specific performance, relating as it does to active duties, deals in the main only with contracts; while the remedy of injunction, having to do with negative duties, deals not only with contracts, but also with torts, and with many other subjects, among them subjects of a purely equitable nature." *Smith's Principles of Equity*, 688; *Story- Eq. Jur.*, 13th Amer. Ed. 1886, p. 179. Note by M.M. Bigelow.

(22) See *Hall v. Hall*, 3 Mac. & G. 85.

(23) *Seighortner v. Wiessenborn*, 5 C.E. Green, 172.

(24) See *Penn v. Whitehead*, 12 Grat. 74.

(25) See *Arunachellam Chettiar v. Manicka Varaher Desikar*, 6 M.L.T. 238=3 Ind. Cas. 437; *Shunmugam v. Moidin*, 8 M. 229.

disapproval of the conduct of a party, grant both an injunction and a receiver against same party.<sup>26</sup>

Yet it by no means follows that the one is a necessary incident of the other. The two are always to be regarded as separate and independent remedies, and are used for the attainment of different results. A Court may refuse a receiver although it may grant an injunction in the same case.<sup>27</sup>

The distinction between a case in which a temporary injunction may be granted, and a case in which a receiver may be appointed, is that, while in either case, it must be shown that the property should be preserved from waste or alienation; in the former case, it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while in the latter case, a good *prima facie* title has to be made out.<sup>28</sup>

The principles upon which English Courts act in the matter of appointing receivers were thus stated by Lord Cranworth. "The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation, which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to whether it will or will not interfere by this kind of *interim* protection of the

(26) *Evans v. Coventry*, 3 Drew. 82.

(27) *Rawnsley v. Trenton Mutual Life and Fire Insurance Co.*, 1 Stockt. 347.

A receiver may be appointed if there are grounds for such appointment, although the application was made only for an injunction and did not ask for appointment of receiver. *Whitney v. Buckman*, 26 C. 447 (Amer). *Dan Prasad v. Gopi*, 11 A.L.J. 973=36 A. 19=22 Ind. Cas. 59. So also where the application was made for a receivership the Court may grant a temporary injunction, if the facts found only necessitate the granting of the latter remedy. *Chandidat Jha v. Padmanand Singh*, 22 C. 459.

Where an injunction is a mere adjunct of receivership, the reversal of the order appointing the receiver will also operate as a removal of the injunction. *Marrell v. Pemberton*, 62 Ga. 29.

(28) *Chandidat Jha v. Padmanand Singh*, 22 C. 459. See also *Sia Ram v. Mohabir*, 27 C. 279=5 C.W.N. 362, where it was held that for the appointment of a receiver it is not necessary that a strong case should be made out, but that it would suffice to show a fair *prima facie* case. See also Kerr on Receiver, pp. 3-4; Kerr on Injunction, pp. 10-11, followed in 22 C. 459. See also *Sivagnanathammal v. Arunachalam Pillai*, 11 Ind. Cas. 870=21 M.L.J. 821=10 M.L.T. 490=(1911) 2 M.W.N. 75. An order of the lower Court for appointment of a receiver under s. 503 of the Civil Procedure Code (Act XIV of 1882) was set aside, and an order for a temporary injunction, under s. 492 of the Code, granted. *Chandidat Jha v. Padmanand Singh*, 22 C. 459. [Referred to in 27 C. 279 (281)=5 C.W.N. 362; 4 Bur L.T. 241=12 Ind. Cas. 198; 14 C.L.J. 215=14 C.W.N. 248=5 Ind. Cas. 96; 1 C.W.N. 170 (172); 11 Ind. Cas. 870=21 M.L.J. 821=10 M.L.T. 490=(1911) 2 M.W.N. 75; 2 L.B.R. 89 (91); 2 L.B.R. 222; 5 O.C. 65 (68, B); U.B.R. (1908), 2nd Qr., C.P.C., p. 17.]

property. Where, indeed, the property is as it were *in medio*, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the right of probate or administration. No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to any one by taking it, and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment the case is necessarily involved in further questions. The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong; if the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its *interim* interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In all cases, therefore, where the Court interferes by appointing a receiver of property in the possession of the defendant before the title of the defendant is established by decree, it exercises a discretion to be governed by all the circumstances of the case.”<sup>29</sup>

In such cases, therefore, a temporary injunction would be granted more readily than a receivership.<sup>30</sup>

“In cases where the plaintiff seeks to obtain control over the expenditure of the income of the disputed property during the pendency of the litigation, the appropriate remedy is rather by the appointment of receiver” than by the grant of a temporary injunction.<sup>31</sup>

In a recent case that came up for decision before the Court of Judicial Commissioner of Oudh, the plaintiff after the institution of her suit against the defendant for possession of moveable and immoveable property, applied for the appointment of a receiver. Subsequently an application was made under S. 492, Civil Procedure Code,<sup>32</sup> for a temporary injunction, such injunction to have effect until the application for the appointment of a receiver was decided. The lower Court made an order directing that the application should be placed on the record of the suit. *Held*, on appeal that the Court should have entertained and decided the application instead of treating it in the way it did.<sup>33</sup>

(29) *Per* Lord Cranworth in *Owen v. Homan*, 4 H.L.C. 997 at pp. 1032—1033.

(30) See *Chandidat Jha v. Padmanand Singh*, 22 C. 459 (465).

(31) *Per* Mookerjee and Caspersz, JJ., in *Kesho Prasad v. Srinivas Prasad*, 10 Ind. Cas. 256 (258) = 13 C.L.J. 394 = 38 C. 791.

(32) See now O. XXXIX, rr. 1 and 2 of the Civ. Pro. Code, 1908.

(33) *Kadir Jahan Begam v. Nathu alias Udit Narain*, 5 O.C. 65.

It was further held that an injunction could not properly be issued in respect of the property unless the plaintiff showed that she had a case, founded on apparent title, for the appointment of a receiver; for she would not be entitled to have a receiver appointed unless she made out a good *prima facie* title to the property.<sup>34</sup>

Neither of the remedies is useful for the purpose of determining disputes concerning title to public offices. When the real question in dispute is the title to public offices, Courts of Equity will not lend their extraordinary protection whether by means of appointment of receiver or by the granting of temporary injunction.<sup>35</sup> No doubt there have been cases where these remedies are granted in suits instituted for the purpose of determining the right to fees or emoluments of public offices. But these were cases in which such fees or emoluments were considered merely as property, and, in such cases only contract rights were involved and not the right to hold the offices.<sup>36</sup>

The Court has no jurisdiction to interfere by way of receiver with the public duties of any of the departments of government.<sup>37</sup> So also our courts have not power to deal with foreign sovereigns. Thus there is no jurisdiction in our courts to interfere with the sovereign acts of a foreign government,<sup>38</sup> or to enforce the contracts of a foreign government against the property of such government in England,<sup>39</sup> or to prevent a foreign sovereign from removing his property in this country<sup>40</sup>, or to make a decree against a foreign ambassador who does not submit to the jurisdiction.<sup>41</sup>

Nor has the Court jurisdiction to interfere by way of injunction or appointment of receiver in matters merely criminal or merely immoral which do not affect any right to property. If a charge be of a criminal nature and does not touch the enjoyment of property, jurisdiction

(34) *Kadir Jahan Begam v. Nathu alias Udit Narain*, 5 O.C. 65. As to the power of court regarding the attachment of property and appointment of receiver, see *Shaikh Mahooddeen v. Shaikh Ahmed*, 14 W.R. 384.

(35) *Tappan v. Gray*, 9 Paige, 507.

(36) *Palmer v. Vaughan*, 3 Swans. 173. See *Hormasji v. Pedder*, 12 B.H.C. 199 (203) as to whether a court can interfere by way of injunction with the exercise of a right or alleged right of officers of municipal body to levy taxes and dues. See also *Godhra Municipality v. Heptulabhai*, 2 Bom. L.R. 572; *Musst. Bebee Khoobun v. Wooma*, 3 C. L.R. 453 (454).

(37) *Ellis v. Grey*, 6 Sim. 214.

(38) *Gladstone v. Ottoman Bank*, 1 H. & M. 505.

(39) *Smith v. Weyuelin*, 8 Eq. 198; *Twycross v. Dreyfuss*, 5 Ch. D. 605.

(40) *Vavasour v. Kemp*, 9 Ch. D. 351.

(41) *Gladstone v. Musurus Bey*, 1 H. & M. 495; See *Kerr on Injunction*, 3rd Ed., p. 4.

by way of injunction or receivership cannot be entertained. The Court has no jurisdiction to restrain or prevent crime, or to enforce the performance of a moral duty, except so far as the same is concerned with rights to property; nor can it interfere on the ground of any criminal offence committed or for the purpose of giving a better remedy in the case of a criminal offence.<sup>42</sup> But if an act which is criminal touches also the enjoyment of property, the Court has jurisdiction, but its interference is founded solely on the ground of injury to property.<sup>43</sup>

Matters of a political nature do not generally come within the jurisdiction of the Court. The Court will not interfere with the view of preventing revolution in a foreign country, or in favour either of the prerogative of a foreign sovereign or the political rights of his subjects or in aid of the revenue laws of a foreign country. But if a case of injury to the property of a foreign sovereign or his government or his subjects be made out, the Court has jurisdiction to interfere at the suit of a foreign sovereign.<sup>44</sup>

Neither remedy applicable in merely political matters.

An injunction is also frequently granted to restrain interference with a receiver,<sup>45</sup> and may be granted in the first instance to be followed by committal in case of persistence in the offence.<sup>46</sup>

An injunction may be granted to restrain a person from proceeding with another action, involving an interference with the possession of a receiver appointed by the Court.<sup>47</sup>

Courts are generally so jealous of any unauthorized interference with the possession of the receivers who are to be regarded as their own officers, that they usually require all adverse claimants to come in and assert their

(42) *Att.-Gen. v. Sheffield Gas Co.*, 3 D. M. & G. 320; *Emperor of Austria v. Day*, 3 D. F. & J. 253; *Saull v. Browne*, 10 Ch. 64; *Kerr v. Mayor, etc., of Preston*, 6 Ch. D. 463; *Hanumayya v. Venkatasubbaya*, 18 M. 23.

(43) *Macaulay v. Schakell*, 1 Bligh, N.S. 127; *Att.-Gen. v. Sheffield Gas Co.*, 3 D. M. & G. 320; *Emperor of Austria v. Day*, 3 D. F. & J. 253; *Mogul Steam Ship Co. v. Macgregor*, 15 Q. B. D. 476; *Kerr on Injunctions*, 3rd Ed., p. 5.

(44) *Emperor of Austria v. Day*, 3 D. F. & J. 253; *United States v. Prioleau*, 2 H. & M. 559, 2 Eq. 659; *Kerr on Injunctions*, 3rd Ed. p. 5.

(45) *Evelyn v. Lewis*, 1844, 3 H. 472; *Tink v. Rundle*, 1847, 10 B. 318; *Att.-Gen. v. St. Cross Hospital*, 1854, 18 B. 601; *Winkle v. Bailey*, 1897, 1 Ch. 123; *Dixon v. Dixon*, 1904, 1 Ch. 151.

(46) *Johnes v. Claughton*, 1822, Jac. 573. See *Beerchund v. Hogg*, Cor. 56, where an injunction was granted by the court to restrain proceedings in the mofussil against the court receiver.

(47) *Re Derwent Rolling Mills Co. Ltd.*, 1904, 21 T. L. R. 81, 701; *Johnson v. James*, 908, 77 L. J. Ch. 824; *Re Connolly Bros., Ltd.*, 1911, 1 Ch. 731.



rights in the action in which the receiver is appointed, and not to interfere of their own accord with his possession and management.<sup>48</sup>

When a receiver is appointed, if any person refuses to hand over certain properties to him, an inquiry should ordinarily be held as to the possession of such property and as to whether it is the property which should be handed over to the receiver, after giving notice of the application for such enquiry under S. 494, Civ. Pro. Code<sup>49</sup>; and then, an injunction can be issued under S. 492, Civ. Pro. Code,<sup>50</sup> ordering the property to be handed over to the receiver, disobedience to which can be enforced under the third para of S. 493, Civ. Pro. Code.<sup>51</sup> Such an inquiry before issuing the injunction, should not, however, be held where the object of granting it, would be defeated by the delay.<sup>52</sup>

Just as the Courts have power to protect the possession of the receiver by means of an injunction directed against the parties or against third persons, so also it is open to the Court to restrain the receiver from prosecuting unauthorized suits against third parties.<sup>53</sup>

Injunction sometimes granted against receiver.

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(48) See High on Receivers, S. 747, p. 888.

(49) See now O. XXXIX, r. 3 of Civ. Pro. Code, 1908.

(50) See now O. XXXIX, r. 1 of Civ. Pro. Code, 1908.

(51) See now O. XXXIX, r. 2 of Civ. Pro. Code, 1908.

(52) *Ranganayakiammal v. Mahali Pillay*, 4 L.B.R. 356.

(53) *In re Merritt*, 5 Paige, 125; High on Receivers, S. 748, pp. 889-890.



## CHAPTER III.

### APPOINTMENT OF RECEIVER—GENERAL PRINCIPLES.

General principles on which appointment is made.

Provisions of the Civil Procedure Code relating to appointment of receiver—"Just and convenient."

Appointment of receiver rests in the discretion of the court.

Court must have jurisdiction.

Appointment made only when an action is pending in the court.

Appointment made only when title to property is in issue.

Applicant must be interested in the property.

Applicant should show a *prima facie* case and title.

Such a title must be a present and existing one

No receiver appointed over mere gratuity.

Applicant must show not only a *prima facie* title, but also danger to the property.

Danger must be immediate.

Danger must be present.

Procedure when property involved is of little value—Defendant's bond substituted for receiver.

Receiver appointed only for the benefit of parties to suit, not strangers.

When defendant is in possession, court would be averse to interfere

Receiver not appointed merely for the purpose of enforcing penal law.

Receiver not appointed in disputes concerning right to hold public offices.

Receiver not appointed when it will interfere with the work of another department of Government.

Receiver not appointed unless order of appointment can be made useful and effective.

Receiver not appointed when the court cannot control the property to protect which the appointment is asked for.

Receiver not appointed when it will interfere with the rights of strangers who are *bona fide* purchasers for value.

Injury to the parties avoided as far as possible.

Receiver not generally appointed when applicant has acquiesced in the wrong complained of—Delay.

Laches and acquiescence distinguished from limitation and prescription.

The effect of plaintiff's laches in British India.

Receiver not generally appointed when there is already another receiver appointed over same property.

Two receivers appointed over different portions of property comprised in the suit.

Existence of other means by which receiver may be appointed, (as) by appointment out of court, no bar to appointment by court.

Appointment, when takes effect.

Difference as regards third parties and parties to suit as regards the effect of appointment.

Effect of consent or acquiescence in the order of appointment.

Order of appointment cannot be questioned collaterally.

Appointment of a successor to deceased receiver.

Duration of receivership.

Power of court to cancel order appointing receiver

Appointment of receiver not always judicial act

Damages may be recovered for procuring wrongful appointment.

Measure of damages in such cases.

Appointment of receiver pending suit is no bar to plaintiff withdrawing his suit.

WE have already seen that the appointment of receiver as well as the granting of a temporary injunction is made for the protection or preservation of property pending proceedings in Court. The protection of legal rights to property from irreparable or at least from serious damage pending the trial of an action at law is, as has already been stated, one of the most important functions of a Court of Justice.<sup>1</sup>

In fact without this power of preventing wrongs before they are committed and of restraining evil actions before they are actually done, a Court of Equity would possess but little power, and command but little respect as a dispenser of justice.<sup>2</sup>

In exercising this jurisdiction, the Court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established by one party or the other.<sup>3</sup> The Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the Court for the protection of the property in question until the

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(1) *Hilton v. Lord Granville*, Cr. & Ph. 283 (292).

(2) "While the Common Law Courts could only compensate an injured plaintiff by awarding him damages, or ordering his goods or land to be restored to him, Courts of Equity, even where recognizing and enforcing exactly the same primary rights and liabilities as the Common Law Courts, applied different remedies to protect and enforce them. And much of the value of the Chancery system depended upon the efficiency of these remedies. Where the common law could only award damages for a wrong when committed, equity could prevent its commission by injunction or receivership. Where law could only give damages for a breach of contract, equity could enforce its specific performance. Where law could give damages for fraud or breach of faith, equity could declare the property affected by it to be held in trust for the injured party—in fact, to be his property; or insist on an account being delivered of all moneys received. But now, by virtue of sub-S. 1 of S. 24 of the Judicature Act, 1873, every kind of equitable relief can be claimed and given in an action in the King's Bench Division. And even where it is not claimed, yet, if the right to it appear incidentally in the course of the proceedings, the appropriate relief will be granted." Odgers on Pleadings, 7th Ed., pp. 204–205.

(3) *Harman v. Jones*, Cr. & Ph. 299 (301).

legal right can be ascertained.<sup>4</sup> The office of the Court to interfere being founded on the existence of this legal right, a man who seeks the aid of the Court must be able to show a fair *prima facie* case in support of the title which he asserts.<sup>5</sup> He is not required to make out a clear legal title, but he must satisfy the Court that he has a fair question to raise as to the existence of the legal right which he sets up,<sup>6</sup> and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent.<sup>7</sup> The Court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, and in the enjoyment of which he remains, be satisfied that the probability is in favour of his case ultimately failing in the final result of the suit.<sup>8</sup> The mere existence of a doubt as to the title does not of itself constitute a sufficient ground for refusing an injunction or appointment of a receiver, though it is always a circumstance which calls for the attention of the Court.<sup>9</sup>

Provisions of the Civ. Pro. Code, relating to appointment of receiver — "Just and convenient."

The general law as to appointment of receivers is contained in O. XL, r. 1 of the Code of Civil Procedure. That section runs as follows:—"Where it appears to the Court to be just and convenient the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree,
- (b) remove any person from the possession or custody of the property,
- (c) commit the same to the possession, custody or management of the receiver and
- (d) confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(4) *Harman v. Jones*, Cr. & Ph. 299 (301).

(5) *Saunders v. Smith*, 3 M & C. 714 (728); *Hilton v. Lord Granville*, Cr. & Ph. 283 (292).

(6) *Shrewsbury and Chester Railway Co. v. Shrewsbury and Birmingham Ry. Co.*, 1 Sim. N. S. 410 (426).

(7) *Sparrow v. Oxford, Worcester and Wolverhampton, Ry. Co.*, 9 Ha. 436 (441). See chapter on "Grounds of appointment."

(8) *Att.-Gen. v. Mayor of Wigan*, 5 D. M. & G. 52.

(9) *Ollendorf v. Black*, 4 De G. & S. 211.

Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”<sup>10</sup>

Prior to the passing of this Act the subject was governed by S. 503 of Act XIV of 1882. Under that section Courts were empowered to appoint receivers, wherever it appeared to it “to be necessary for the realization, preservation or better custody or management of any property, moveable or immovable, the subject of a suit or attachment.” The present Code gives much larger powers of appointment. It, in fact, brings the Indian law quite into harmony with the law in England. The words “just and convenient” which occur in the present Code are taken from the corresponding provisions of the English Judicature Act,<sup>11</sup> which greatly enlarged the powers which the Court of Chancery in England formerly exercised.<sup>12</sup> Indian Courts under the present Code have similar powers to appoint, as well as to remove, a receiver, in the exercise of a sound judicial discretion.<sup>13</sup>

Thus, we find it laid down, on the analogy of English precedents, as a settled principle of our law, that the appointment of a receiver *pendente lite*, like the granting of an interlocutory injunction, is a matter dependent to a large extent on the discretion of the Court to which the application is made, and is to be governed “by a consideration of the entire circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established.”<sup>14</sup>

“Discretion, when applied to a Court of law, means discretion guided by law. It must be governed by rule and not by humour. It

(10) Civil Procedure Code (Act V of 1908), O. XL, r. 1.

(11) Judicature Act, 1873, S. 25 (8).

(12) *Srimati Mathuria v. Shibdyal*, 14 C.W.N. 252=5 Ind. Cas. 27; see also per Jessel, M.R., in *Anglo Italian Bank v. Davies*, 47 L.J., Ch. 833=9 Ch. D. 275.

(13) *Srimati Mathuria v. Shibdyal*, 14 C.W.N. 252=5 Ind. Cas. 27. The condition of the old Code that to justify an appointment of receiver in any case it should be found necessary to preserve the property from waste and alienation having been removed, there has been a substantial widening of the Court's discretion. See *Ramji Ram v. Salig Ram*, 14 C.W.N. 248=5 Ind. Cas. 96. (22 C. 459 and 17 C. 614, R.)

(14) *Jewani v. Labhu Ram*, 107 P.R. 1908=12 P.L.R. 1909 (following 5 A. 561; 15 C. 818; 73 P.R. 1902); *Mathusri v. Mathusri*, 19 M. 120, P.C.=23 I.A. 28=6 Sar. 684. *Weatherall v. Eastern Mortgage Co.*, 13 C.L.J. 495=9 Ind. Cas. 985; *Sidheswari v. Abhoyeswari*, 15 C. 818; *Nga Kyi v. Mi Sin*, U.B.R. (1908), 2nd Qr., Civil Procedure, p. 17 (following 6 C.L.R. 467). *Srimati Prosonomoyi v. Beni*, 5 A. 556=A.W.N. 1883, 136; *Sivagnanathammal v. Arunachelam Pillai*, 21 M.L.J. 821=(1911) 2 M.W.N. 75.

must not be arbitrary, vague and fanciful, but legal and regular.”<sup>15</sup> This discretion is one which is to be exercised with great care and caution.<sup>16</sup> This power is not to be exercised merely as a matter of course, or “simply because there could be no harm in appointing a receiver.”<sup>17</sup> Very strong grounds have to be adduced before a Court can interfere with private rights by the appointment of a receiver.<sup>18</sup>

The appointment should only be granted where some specific act of misappropriation, malversation or mismanagement is shown, but not on a mere apprehension of future waste.<sup>19</sup>

Since the appointment of a receiver is thus a discretionary matter, the action of the lower Court in appointing or denying a receiver *pendente lite* will not be disturbed upon appeal unless there has been a clear abuse.<sup>20</sup> The appellate Court will always attach great weight to the opinion of the first Court, whose order will not be set aside, unless it is either arbitrary, vague and fanciful.<sup>21</sup> A receiver will not be appointed, if the circumstances of the case do not require it, even by consent of all the parties to the suit, especially when the rights of third persons are concerned and may be jeopardised by the appointment.<sup>22</sup>

(15) *Harbuns Sahai v. Bhairo Pershad Singh*, 5 C. 259=4 C.L.R. 23; *Hirabai v. Dhanjibhai*, 2 Bom. L.R. 845.

(16) *Srimati Prosonomoyi v. Beni*, 5 A. 556=A.W.N. 1883, 136; See also *Gossain Dulmir v. Tekait*, 6 C.L.R. 467 (469).

(17) *Srimati Prosonomoyi v. Beni*, 5 A. 556=A.W.N. 1883, 136; *Nga Kyi v. Mi Sin*, U.B.R. 1908, 2nd Qr., Civil Procedure, p. 17.

(18) *Bakht Bhari v. Isa Shah*, 62 P.W.R. 1911 (136 P.R. 1890; 73 P.R. 1902; 36 P.R. 1910=53 P.W.R. 1910, Fol.) See also *Srimati Mathuria v. Shib Dayal*, 14 C.W. N. 252=5 Ind. Cas. 27; See chapter on “Grounds of appointment.”

(19) See *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=36 P.R. 1910=6 Ind. Cas. 659=72 P.L.R. 1910 (referring to and distinguishing 73 P.R. 1902; 17 C. 614; 18 M. 23).

(20) *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=36 P.R. 1910=6 Ind. Cas. 659=72 P.L.R. 1910 (following 10 C. 713). Where the order of the lower Court in the matter of appointment of receiver is sought to be impeached in appeal, it is for the appellant to show that the lower Court exercised its discretion improperly. *Raja Ram v. Thakurain*, 7 Ind. Cas. 344.

(21) (*Ibid.*). “The trying Court’s selection of a receiver will not be set aside in appeal except in an extreme case, (*i.e.*), unless there be some overwhelming objection in point of propriety or choice or some fatal objection in principle.” *Jibanessa Khatun v. Majidunnessa*, 17 C.W.N. 581 (582)=18 Ind. Cas. 398.

(22) *Whelpley v. Erie Railway Co.*, 6 Blatchf 271. Consent cannot give jurisdiction, which is absent as regards the subject-matter, nor probably as regards local or pecuniary jurisdiction. When the judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process, although they may constitute the judge their arbiter and be bound by his decision on the merits when these are submitted to him. *Hakim Chand*, Res judicata, 409, 411; *Ledgard v. Bull*, 9 A. 191, 203=13 I.A. 134. See also *Ameer Ali’s Civil Procedure in India*, 1908, p. 67. The Court will not appoint a receiver though the parties consent to the receivership if there be no necessity for the same. *Re London Pressed Hinge Co. Ltd.*, (1905) 1 Ch. p. 583.



In fact, as in all matters of discretion, in determining whether a receiver is to be appointed or not in any particular case, much light cannot be thrown by the previous decisions. Each case must be decided on its own special and peculiar merits.<sup>23</sup> As stated by the Court in *Mays v. Rose*,<sup>24</sup> "An application for the appointment of a receiver, is one which is addressed to the sound discretion of the Court, to be exercised as an auxiliary to the attainment of the ends of justice. It is one of the modes in which the preventive justice of a Court of Equity is administered. The great object is to secure the property or thing in controversy, so that it may be subjected to such order or decree as the Court may make in the particular case. It is intended equally for the security of both plaintiff and defendant. \* \* \* \* A reference to the various decisions upon motions for the appointment of receivers shows that *each case has been made to depend upon its own peculiar features*,<sup>25</sup> and throws but little light upon any new case, except so far as they establish the general principles which should govern the Court in the exercise of its discretion upon these motions. These principles are: that the plaintiff must show, first, either that he has a clear right to the property itself, or that he has some lien upon it; or that the property constitutes a special fund to which he has a right to resort for the satisfaction of his claim. And secondly, that the possession of the property by the defendant was obtained by fraud; or that the property itself, or the income arising from it, is in danger of loss from the neglect, waste, misconduct or insolvency of the defendant. These are believed to be the general rules governing all applications of this kind."<sup>26</sup>

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(23) It has been stated in a recent case by the Calcutta High Court that, in the matter of the appointment of receivers the court is to be guided by "a consideration of the circumstances of the particular case." *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495.

(24) *Freem* (Miss.) 703 at p. 718.

(25) The italics are ours.

(26) See the judgment in *Mays v. Rose*, *Freem* (Miss.) 703 (718).—The words "just and convenient" in O. XL, r 1 of the Code of Civil Procedure, 1908, are very wide and were adopted from the English Judicature Act. A few of the principles on which the Courts of Equity act in England are as follows:—(1) The discretion is to be exercised with the greatest care and caution and it must be guided by law. A receiver is to be appointed on the principle of preserving property pending the litigation which is to decide the rights of the parties to the property. (2) If the relief sought by a defendant is not connected with the subject-matter of the plaint, the defendant must, if he desires a receiver, institute an action of his own for such purpose. (3) A receiver is not appointed except on special grounds at the instance of a person alleging a mere legal title against another party in possession of immoveable property who also claims to hold by a like legal title. *Pana Seenev v. Ana Mahalingam*, 8 Ind. Cas. 1191=3 Bur. L.T. 95.



As regards the appointment of receivers, it is essential, in the first place, that the Court should have jurisdiction to try the subject-matter of the suit. It has been laid down that Courts in British India shall have jurisdiction to try all suits of a *civil nature* excepting suits of which their cognizance is either expressly or impliedly barred.<sup>27</sup>

Rights of a civil nature mean such rights as are vested in the citizen, and fall within the domain of private and not of public law.<sup>28</sup> These rights relate both to property and to the person, and suits may be for the recovery of possession, or damages, or for specific relief. Wherever a right is recognised by law, a suit will lie to enforce it unless it is barred by any enactment on the principle *ubi jus ibi remedium*.<sup>29</sup>

Suits merely relating to religious rights and ceremonies will not be entertained unless they involve a right to property or to an office. The latter may be either of a personal character, such as that of a family priest, or may be a local office. Personal offices are gradually losing their legal character as such, and the law now appears generally to recognize only local offices that is, offices connected with a certain temple, *ghat*, or locality which are essentially distinct from personal offices.<sup>30</sup>

The cognizance of the suit must not be barred, either expressly or impliedly by any enactment in force in British India.<sup>31</sup> The jurisdiction of a Civil Court is not excluded unless the cognizance of the entire suit as brought is barred. The most important restrictions on the jurisdiction of the ordinary Civil Courts over civil suits are enacted by the Acts relating to the revenue or the rent of the agricultural or other lands assessed with the Government demand. The provisions of these Acts are different for different provinces, but they all appear to be based on the principle that, matters likely to affect the liability for, or the amount of, the Government land revenue, should be adjudicated upon by Revenue Officers, who have better acquaintance with such matters, and with a procedure more elastic and summary than that of the ordinary Civil Courts.<sup>32</sup>

(27) See S. 9, of the Code of Civil Procedure, Act V of 1908.

(28) *Kodiyalam v. Sudesana*, 11 M.L.J. 422; See Hukm Chand, Civ. Pro. Code, 57 cited in Amir Ali's Civil Procedure Code, p. 83.

(29) Ameer Ali's Civil Procedure in India, 1908, p. 84.

(30) Ameer Ali's Indian Civil Procedure Code, 1908, p. 85. For a case where the court refused to appoint a receiver in respect of fees of the pilgrim's guide or panda, see *Anund v. Ganesh*, 40C. 678.

(31) See S. 9 of the Code of Civil Procedure, Act V of 1908.

(32) See Ameer Ali's Civil Procedure Code, 1908, p. 85. See also *Antu v. Ghulam Muhammad Khan*, 6 A. 110, and see Hukm Chand, Civil Procedure Code, 76; See Hukm Chand, Res. Jud. 268.

It has been held that unless there is a pending cause, there can be no appointment of receiver.<sup>33</sup> The reason of the rule is not far to seek. It is a well established principle of law that a Court cannot appoint a receiver unless it has *seisin* of the property over which the appointment of the receiver is asked for, either by a suit being pending or by proceedings in execution of decree made in a suit being pending and attachment having been made. Hence it is only the Court in which a proceeding is pending and which has thereby the property under its control that can appoint a receiver.<sup>34</sup>

The Code of Civil Procedure which contains the law upon the subject provides for the appointment of a receiver in respect of property, whether moveable or immoveable, which is the subject of a suit or under attachment,<sup>35</sup> and the Provincial Insolvency Act provides for a similar appointment in respect of property belonging to insolvent judgment-debtors.<sup>36</sup> In the last two cases<sup>37</sup> the appointment is "rather a matter of ministerial procedure than by specific relief."<sup>38</sup>

(33) See *Ex parte Whitfield*, 2 Atk. 315; *Salter v. Salter*, (1896) p. 291; explaining *In re Parker*, (1885) 54 L J. Ch. 694.

(34) Under the Code of 1882 where the procedure contained in S. 505 had been adopted a District Court could appoint a receiver in suits pending before or attachments made by Subordinate Courts. Now Subordinate Courts may themselves appoint directly. Hence the District Courts have no such power. *Latafut Hossein v. Anunt Chowdhry*, 23 C. 517, 519, 520. See also Woodroffe's Law relating to Receivers, 2nd Ed., 1910, p. 20. A Court has no jurisdiction to appoint a receiver over property which is not the subject of litigation. *Musamat Pounchabai v. Lekhraj*, 3 S.L.R. 118=4 Ind. Cas. 605.

A District Judge has no power to appoint a receiver in respect of property, the subject of a suit or attachment in other Courts, even though such Courts may be subordinate to his Court. Section 503 clearly gives the power to appoint a receiver only to the Court wherein a suit is brought or by which the property has been attached. There is no doubt that a Court cannot appoint a receiver, except it has *seisin* of the property, either by a suit being pending or by proceedings in execution of decree made in a suit being pending and attachment having been made. It is only the Court in which a proceeding is pending, and which has thereby the property under its control that can appoint a Receiver. *Latafut Hossein v. Anunt Chowdhry*, 23 C. 517.

(35) Civil Procedure Code (1882), S. 503; Act V of 1908, O. XL, r. 1.

(36) Civil Procedure Code (1882), Ch. XX. See Provincial Insolvency Act, Ss. 18-22.

(37) Property may be attached for the first time in execution of a decree, Civil Procedure Code (1882), sch. IV, form 168; Act V of 1908, sch. I, O. XXI, r. 42-54. A receiver in a case of insolvency is the agent of the creditors, *Badal Singh v. Birch*, 15 C. 762, 764; *Ex parte Warren*, (1875) 10 Ch. 222. Insolvent's property vests in the receiver, except such as are not liable to attachment, *Kanhai v. Kalka*, 27 A. 670; Prov. Ins. Act, Ss. 18, 16 (2).

(38) Collett's Specific Relief Act, 326; Banerjee's Law of Specific Relief, 1909, p. 684.

Before granting an application for the appointment of receiver, it should be made to appear to the Court, that title to some property is in issue. Thus, where the relations between the parties are strictly of a personal nature, and no question of property is at issue, the Court will not interfere by injunction.<sup>39</sup>

**Appointment made only when title to property is in issue.**

**Applicant must be interested in the property.**

There is no jurisdiction to appoint a receiver over property in which the person applying for the appointment has no interest.<sup>40</sup>

Although, as we have already seen, the Court does not, in passing orders on the receivership application, anticipate the ultimate decree to be passed in the suit, yet, for the Court to grant the application for the appointment of a receiver, the applicant should at least present a *prima facie* case, and should convince the Court that, there may be a fair chance of his succeeding in the suit,<sup>41</sup> and that there is also an imminent danger of loss if a receiver be not appointed.<sup>42</sup>

**Applicant should show a *prima facie* case and title.**

No Court would appoint a receiver on the application of a plaintiff when it is apparent on the face of the record that he has little or no chance of success.<sup>43</sup> But the proof which the applicant would have to offer in support of his application need not be so full and complete as would be necessary when the case is tried on the merits or at the time of the final hearing.<sup>44</sup>

(39) *Mallican v. Sullivan*, 4 Times R. 204. See also Kerr on Injunctions, 3rd Ed. 1888, Ch. I, p. 4.

(40) *Whitley v. Challis*, (1892) 1 Ch. 64.

(41) *Kaser Devi v. Partab Singh*, 39 P.R. 1908=91 P.W.R. 1908=195 P.L.R. 1908; *Sia Ram v. Mohabir*, 27 C. 279=5 C.W.N. 362; *Nga Kyi v. Mi Sin*, U.B.R. 1908, 2nd Qr., Civil Procedure, p. 17; *Shamchand v. Bhaya Ram*, 5 C.W.N. 365; *Musst. Budhwanti v. Must. Bishen Kour*, 59 P.L.R. 1902=73 P.R. 1902.

(42) *Norris v. Lake*, 89 Va. 513; 16 S.E. 663; See chapter on "Grounds of appointment." See also *Chandidat Jha v. Padmanand*, 22 C. 459.

(43) In *Owen v. Homan*, 3 Mac. & G. 378 affirmed on appeal to the House of Lords in 4 H.L. Rep. 997, Lord Truro observes, at p. 411, as follows: "I am of opinion that the case upon the whole record presents too much doubt as to plaintiff's right to a decree to warrant the possession of the property being disturbed. It is unnecessary to do more than to state that the granting of a receiver is a matter of discretion, to be governed by a view of the whole circumstances of the case; one most material of which circumstances is the probability of the plaintiff being ultimately entitled to a decree. In this case many of the important points arise upon the construction of the deeds, and not upon disputed facts; and I repeat that in my opinion that construction is attended with too much doubt and difficulty to entitle the plaintiff to a receiver."

(44) *Pearce v. Elwell*, 116 N.C. 595; 21 S.E. 305.

In order to support a petition for the appointment of a receiver it is also necessary that the plaintiff should have a present existing interest in the property over which he seeks to have the receiver appointed.<sup>45</sup> Hence if he had previous to the application parted with his right, title and interest in such property, the Court will not interfere, even though the action of the defendant was clearly wrongful and the plaintiff had an existing interest in the property at the time when the wrongful act was done.<sup>46</sup>

No receiver appointed over mere gratuity. So also a receiver will not be appointed over a mere gratuity. Such a right is not one which Courts will protect by means of this extraordinary remedy.<sup>47</sup>

The applicant should not only show a *prima facie* case and a *prima facie* title, but he should also show that there is imminent danger to the property. This element of danger is an important consideration in the case. If there is no danger to the property, there is no necessity for a receivership.<sup>48</sup>

Further, the danger which necessitates the appointment of receiver, is not past or remote danger, but it must be a well grounded apprehension of immediate injury.<sup>49</sup>

A receiver would not be appointed simply because, an occasion for such appointment is anticipated or may arise in the future, but the danger apprehended must be present and existing at the time when the appointment is made.<sup>50</sup>

Danger must be substantial. The threatened danger must be real and of a substantial character.<sup>51</sup>

(45) *Smith v. Wells*, 20 How. Pr. 158; *Steele v. Apsy*, 128 Ind. 367, 27 N.E. 739.

(46) *Smith v. Wells*, 20 How. Pr. 158.

(47) *Timothy v. Doy*, (1908) 2 L.R. Ir, 26; See also *Anund v. Ganesh*, 40 C. 678, where the Court refused to appoint a receiver for the collection of fees which pilgrims voluntarily paid to their guides and priests. See also chapter on "Over what property appointed."

(48) *Mi Shewe v. Mi Mi*, 12 Ind. Cas. 198=4 Bur. L. T. 241; *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495=9 Ind. Cas. 985.

(49) *Ibid. Must. Budhwanti v. Must. Bishen Kour*, 59 P. L. R. 1902=73 P.R. 1902.

(50) *Ibid*; *Chadron Banking Co v. Mahoney*, 43 Neb. 214, 61 N.W. 594.

(51) It is sometimes said by Courts in this country as well as by English Courts that a man who seeks the aid of the Court "by the grant of injunction or receiver must be able to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable, before the legal right can be established upon trial." (*Cuddon v. Morley*, 7 Ha. 206; *Rigby v. Great Western Railway Co.*, 2 Ph. 50). By the term "irreparable injury" it is not meant that there must be no physical possibility of repairing the injury; all that is meant is, that the injury would be a grievous one, or at least a material one, and not adequately reparable by damages (*Pinchin v. London and Blackwall Railway Co.*, 5 D.M. & G. 860); and by the term "the inadequacy of the remedy by damages" is

We have already seen that the object of the appointment of a receiver is the protection of the property *pendente lite*. Hence, where there is no actual property moveable or immoveable in existence which requires to be protected, or where the property which is the subject of the suit is of little or no value, Courts would be very reluctant to interfere by the appointment of a receiver.<sup>52</sup> In the latter case, the Court, instead of appointing a receiver, would require the defendant to execute a bond for the protection of the plaintiff's interest in the suit property.<sup>53</sup> Especially this latter course will be adopted when the Court finds that the defendant is a man of means, and the property involved is such that there is not much likelihood of its suffering any appreciable injury by its remaining in his hands.<sup>54</sup> So also, although a receiver has actually been appointed, the Court may discharge him, if the defendant gives a bond with proper security, for the protection of the plaintiff's interest in the suit properties.<sup>55</sup>

Receiver appointed only for the benefit of parties to suit, not strangers.

A receiver *pendente lite* is always appointed only for the benefit of the parties to the suit. A stranger is not entitled to apply for the appointment of a receiver, because he can have no interest at stake in the suit<sup>56</sup>. No doubt there may occur cases in which the appointment of a receiver may interfere with the rights of a stranger. In such cases the proper course for him is to apply to the Court which appointed the receiver. Such Courts would protect his rights against any inequitable interference therewith by the receiver who is only the officer of such Court.<sup>57</sup>

meant that the remedy by damages is not such a compensation as will in effect, though not *in specie*, place the parties in the position in which they formerly stood. (*Wood v. Sutcliffe*, 2 Sim. N. S. 165). If the act complained of threatens to destroy the subject-matter in question, the case may come within the principle, even though the damages may be capable of being accurately measured. (*Hilton v. Lord Granville*, Cr. & Ph. 283, 292). The fact that the amount of damage cannot be accurately ascertained may constitute irreparable damage; but if there be a reasonable means of approximating so nearly to the quantity of damage as to show on the whole that it will not be irreparable, the case is different (*Cory v. Yarmouth and Norwich Railway Co.*, 3 Ha. 603). A man who has a full and complete remedy by damages cannot be heard to say that the damage is irreparable. (*Kerrison v. Sparrow*, 19 Ves. 449). In some cases, indeed, the Court will not withhold its hand on the ground of the smallness of the damage, unless it be clear beyond all manner of doubt that the damage is inappreciable. (*Frewin v. Lewis*, 4 M. & C. 254).

(52) *Whitworth v. Whyddon*, 2 Mac. & G. 52.

(53) *Stillwell v. Savannah Grocery Co.*, 88 Ga. 100, 13 S.E. 963. See also *Supra-sanna Roy v. Upendna*, 28 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601, where all the courses open to the Court in dealing with an application for receivership are indicated.

(54) *Ibid.*

(55) *Twin City Power Co. v. Barrett*, 61 C.C.A. 288; 126 Fed. 302.

(56) *Mahoney v. Belmont*, 62 N.Y. 133; See chapter on "Who may apply etc."

(57) *Howell v. Ripley*, 10 Paige 43.



Where the defendant is in possession and enjoyment of property over which a receiver is sought to be appointed and which is the subject-matter of the litigation, the Court ought to proceed with extreme caution in appointing a receiver.<sup>58</sup>

**When defendant is in possession Court would be averse to interfere.**

Especially when the property has been in the possession and enjoyment of the defendants for a long series of years, and plaintiff shows no real danger, a receiver *pendente lite* will not as a rule be appointed.<sup>59</sup>

The reason of this rule is well stated in the case of *Owen v. Homan*,<sup>60</sup> by the Lord Chancellor. It is stated as follows. "No positive, unvarying rule can be laid down as to whether in any particular case the Court will or will not interfere by this kind of *interim* protection of the property. Where indeed the property is as it were *in medio*, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed, pending a litigation as to the right of probate or administration. No one is in actual lawful enjoyment of property so circumstanced, and no wrong can be done to any one by taking and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The Court, by taking possession at the instance of the plaintiff, may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may, by its *interim* interference, have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In all cases, therefore, where the Court interferes by the appointment of a receiver of property in the possession of the defendant before the title of the plaintiff is established by decree, it exercises a discretion to be governed by all the circumstances of the case. When the evidence on which the Court is to act is very clearly in favour of the

(58) *Owen v. Homan*, 4 H.L. Rep. 997, affirming S.C., 3 Mac. & G. 378. Strong grounds have to be adduced before a Court can interfere with private rights by the appointment of a receiver. *Bakht Bhari v. Isa Shah*, 62 P.W.R. 1911. See also chapter on "Grounds of appointment."

(59) *Municipal Commissioners of Carrickfergus v. Lockhart*, Ir. Rep. 3 Eq. 515; *Kelly v. Boettcher*, 89 Fed. 125. Accordingly. O. XL, r. 1 of the Code of Civil Procedure declares that nothing therein contained shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove. Civil Procedure Code, 1908, O. XL, r. 1, cl. (2).

(60) 4 H. L. Rep. 997 (1032), affirming S. C., 3 Mac. & G. 378.

plaintiff, then the risk of eventual injury to the defendant is very small, and the Court does not hesitate to interfere. Where there is more of doubt there is of course more of difficulty; the question is one of degree, as to which, therefore, it is impossible to lay down any precise and unvarying rule."

Receiver not appointed merely for the purpose of enforcing penal law.

It is a settled principle of our law that the appointment of a receiver, which, as we have already seen, is a form of specific relief,<sup>61</sup> cannot be granted merely for the purpose of enforcing a penal law<sup>62</sup>.

The jurisdiction of a Court of Equity "rests upon injury to property actual or prospective, and the Court has no jurisdiction to prevent the commission of acts which are merely criminal or merely illegal and do not affect any rights of property."<sup>63</sup>

Hence "equity has no jurisdiction to interpose for the prevention of crime, or to enforce moral obligations, nor will it interfere for the prevention of illegal acts, merely because they are illegal<sup>64</sup>. It is clear, therefore, that the real object of the party seeking specific relief must be the protection of some civil right or the prevention of some civil wrong. It is in the case of civil injuries alone that a British Indian Court may be moved and this particular form of relief asked for."<sup>65</sup>

Although, there can be no specific relief whether by way of injunction or appointment of receiver merely for the purpose of enforcing a penal law, yet, where the criminal offence also amounts to a civil wrong and affects proprietary rights, the appointment of receiver may be a

(61) See S. 5 of the Specific Relief Act, I of 1877.

(62) See S. 7 of the Specific Relief Act, I of 1877.

(63) *Per* Turner, L. J., in *Emperor of Austria v. Day*, 3 De G.F. & J. 217, 232; see also *Gee v. Prichard*, 2 Sw. 402; Courts of Equity will not aid the promotion or defence of any suit which is not purely of a civil nature. Thus, for example, they will not compel a discovery in aid of a criminal prosecution; or of a penal action; or of a suit in its nature partaking of such a character; or in a case involving moral turpitude; for it is against the genius of the common law to compel a party to accuse himself; and it is against the general principles of equity to aid in the enforcement of penalties or forfeitures. Story's Equity Jurisprudence, Vol. II, 1861, p. 711. In India, however, it is not necessary that any rights of property should be affected, there may be specific relief to enforce obligations, as defined in S. 3 of the Specific Relief Act; see S. 55, ill. (c), where, though defamation is a criminal offence (I. P. C., S. 499), since it is also a tort, the Civil Court protects the civil right of private reputation. But relief will not be given against the provisions of a statute. *Keating v. Sparrow*, (1810) 1 Ba. & Be., 367, 373; 2 Wh. & T. 279. See also Banerjee's Specific Relief Act, 1909, Appendix C., p. 34.

(64) Spelling on Injunctions, S. 24, p. 36; Banerjee's Specific Relief, 1909, p. 6.

(65) See S. 146 of the Code of Criminal Procedure (V of 1898) which empowers the magistrate to appoint receivers in certain cases; but even this is only for the protection of civil rights.

proper relief.<sup>66</sup> The fact that the acts complained of amounts to misappropriation rather than waste makes no difference, as far as the right to receivership is concerned.<sup>67</sup> As their Lordships Muthusami Aiyar and Best observed "The Code of Civil Procedure authorizes the appointment of a receiver for the preservation or better custody of the property which is the subject of the suit."<sup>68</sup> Whether property is wasted or misappropriated makes no difference for the purpose of this Code. The future institution of a criminal prosecution will not enable a party to recover property that may have been misappropriated."<sup>69</sup>

Courts will not grant this extraordinary remedy of appointment of receiver or the granting of a temporary injunction in disputes concerning the right to hold public offices. We have already seen that it is only when rights of property are in dispute that a receiver is appointed for the protection of such rights. The right to hold an office does not directly, nor does it always necessarily involve any right to property. But, in some cases, the right to the office also involves the right to receive the fees and emoluments attached to such office. Even in such cases, Courts are averse to interfere by the appointment of receiver or grant of temporary injunction.<sup>70</sup>

Although the defendant who is alleged to be an intruder and to be in wrongful possession of the office, and also to be wrongfully receiving the fees and emoluments of such office, be an insolvent, the Court would not grant an injunction against him, from receiving such fees and emoluments, nor will it appoint a receiver to collect and hold such fees.<sup>71</sup>

The reason of this rule is that the appointment of a receiver in such a case would be, in effect, "the assumption by the Court of a right to make a temporary appointment to the office, which is by law required to be filled up by the executive department of the government, and would be utterly foreign to the jurisdiction of a Court of Equity."<sup>72</sup>

The grounds on which the principles stated above are based were clearly explained by the Chancellor Walsworth in the case of *Tappan v.*

(66) *Hanumayya v. Venkatasubbayya*, 18 M. 23.

(67) *Ibid.*

(68) This was a case under the Civil Procedure Code of 1882. The wording of the present Code is different and gives much wider powers to the Court.

(69) See *Hanumayya v. Venkatasubbayya*, 18 M. 23.

(70) *Tappan v. Gray*, 9 Paige, 507.

(71) *Ibid.*

(72) *Ibid.*

*Gray*.<sup>73</sup> In that case, a person claiming to be entitled to the office of flour inspector, an office under the service of Government, instituted a suit against the defendant alleging that he had usurped the office and was wrongfully receiving its fees and emoluments. It was also alleged that he was wholly insolvent, and it would be impossible for the plaintiff to recover any money which he might receive as fees or emoluments before the right to the office would be determined by legal proceedings. On these grounds plaintiff applied for an injunction and a receiver. The lower Court decided that the plaint showed a *prima facie* case of intrusion by defendant into complainant's office; and that defendant's insolvency was sufficient to grant the injunction and receiver until the right could be determined finally in the suit. The case went up on appeal. In reversing this decision of the lower Court, Walsworth, Chancellor, held as follows:—If the lower Court was right in the conclusion that the plaintiff was entitled to discharge the duties of the office of flour inspector, after the appointment of the senate, and that the appointment of the defendant to the office was illegal and unauthorised, I think he erred in supposing that this Court had jurisdiction to afford the plaintiff any relief at this time. This Court certainly ought not to assume the jurisdiction to oust an officer in no way connected with the administration of justice here, and over whose appointment it has no control, from an office, the duties of which he is discharging under color of an appointment from the executive of the state, until his right to such office has been settled in the mode prescribed by the Statutes for the determination of his claim. That, however, would be the necessary effect of an injunction such as is prayed for in this case. For the receiving and intermeddling with and enjoying the fees, profits and advantages of the office are so connected with the proper discharge of the duties of the office itself, that they could not be separated without rendering the office of no benefit whatever to the defendant, should he finally succeed in establishing his right to it. Such relief, therefore, could not be granted without depriving the public of the benefit which the inspection law contemplates, until the termination of this litigation. And it would be equally inconsistent with public policy and the rights of those who are interested in having the duties of the office properly discharged, to appoint a receiver of the fees and emoluments of such an office. The appointment of a receiver to discharge the duties of the office, in connection with the receipt of the fees and emoluments, would be still more objectionable in principle, as it would, in effect, be the assumption of

a right by this Court to make a temporary appointment of a public officer, whose appointment is by law required to be made by the executive department of the Government."<sup>74</sup>

So also a receiver will not be appointed when it would interfere with another department of Government. Thus, in a case where a creditor who had lent certain amounts for a work of public improvement, to be repaid out of the rates and taxes to be levied from the persons enjoying the benefit of such improvements applied for the appointment of a receiver over such rates and taxes, which were to be fixed and collected at a future period by certain public officers to be appointed for the purpose, it was held, that no receiver could be appointed in such a case.<sup>75</sup>

A receiver will not be appointed unless there is a probability that the appointment would be effectual and useful.<sup>76</sup> Otherwise the Court would be wasting its powers in making useless orders. No Court is bound to make an order which, there is not any probability of being made useful and effective,—e.g., when the property is in the possession of certain officers or persons over whom the Court has no control.<sup>77</sup>

So also a receiver will not be appointed when the property for the protection of which the appointment is sought to be made is of such a nature that it is not possible for the Court to put the receiver in possession.<sup>78</sup>

(74) Per Chancellor Walsworth in *Tappan v. Gray*, 9 Paige, 507; The wording has been slightly adopted to suit the Indian legal phraseology.

(75) *Drewry v. Barnes*, 3 Russ. 94. See also chapter on "Over what property appointed." See Daniell's Chancery Practice, 7th Ed., p. 1425.

(76) *Edwards & Co. v. Picard*, (1909) 2 K. B. p. 908; *Wills v. Luff*, (1888) 38 Ch. D. 197; *Mercantile etc. Trust Co. v. River Plate etc. Co.*, (1892) 2 Ch. 303; *Re Kott End Railway Act*, 1898, (1901) 2 Ch. p. 18.

(77) As in the case of a permit of license to occupy a stall in a city market, the control of which is wholly vested in certain municipal officers, whose discretion in granting or withholding the permit is beyond control by the Courts. A receiver will not be appointed with regard to such property. *Barry v. Kennedy*, 11 Ali. Pr. N. S. 421. A receiver will not be appointed unless the appointment can be made effective (*Mercantile Investment etc. Co. v. River Plate etc. Co.*, (1892) 2 Ch. 303). If the appointment will prove destructive to the property the appointment will not be made (*Cooper v. Reilly*, 1830, 1 Russ. & M. 560; Halsbury's Laws of England, Vol XXIV, S. 680, p. 366.)

(78) See *Barry v. Kennedy*, 11 Ali. Pr. N. S. 421. It has been said in the case of *Latafut v. Anunt*, that it is only the Court "which has the property under its control that can appoint a receiver." See *Latafut Hossein v. Anunt*, 23 C. 517 (519-520).



In places where third parties have acquired an interest in the subject-matter of the suit, and such parties are *bona fide* purchasers for value, and are not parties to the suit, the Court will not exercise its extraordinary jurisdiction by taking the property out of the possession of such third parties and entrusting it to the custody of the receiver. Because, although in some cases, even *bona fide* purchasers for value, have to lose their property, by the final adjudication of the Court, yet their rights would not be interfered with in such a summary or collateral method as the appointment of receiver.<sup>79</sup>

The Court will not by the appointment of a receiver on an interlocutory application interfere on behalf of one party in a way which might injure the other party in case he should succeed.<sup>80</sup>

Receiver not appointed when it will interfere with the rights of strangers who are *bona fide* purchasers for value.

Injury to the parties avoided as far as possible.

Receiver not generally appointed when applicant has acquiesced in the wrong complained of—Delay.

Again when the person applying for the receivership has acquiesced in the property being enjoyed by the other party for a considerable time or has otherwise delayed in asking for the relief the Court would not generally grant him the relief by appointing a receiver.<sup>81</sup>

(79) *Levi v. Karrick*, 13 Jowa 344; High on Receivers, S. 33, p. 47. In a rent case it was held by the Punjab High Court that very strong grounds have to be adduced before a Court can interfere with private rights by the appointment of a receiver. Per Kensington, J., in *Mussammat Bakht Bhari v. Isa Shah*, 62 P.W.R. 1911. In the case of *Mahomed Medhi v. Zoharra Begum*, 17 C. 285 (288) his Lordship Pigot, J., in delivering the judgment of the Court of Appeal said: "It is clear that whatever is the least expensive course, consistent with a satisfactory enquiry, ought to be adopted, in order that the Court shall not by its own dominant power, hold property on which the parties to the suit have no claim and hold it in despite of the real owners. If the Court can find out who the real owners are, it should do so and in the least expensive manner." That the Court has jurisdiction to remove even strangers to the suit and entrust it to the receiver cannot be denied. It has been said that the mere assertion by a stranger in possession of a paramount title against the receiver, does not compel the court to withhold its hands. The title must be proved. See *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(80) *Evans v. Puleston*, (1880) W.N. 127.

(81) *Srimati Mathuria Debya v. Shibdayal*, 14 C. W. N. 252=5 Ind. Cas. 27; *Nga Kyi Maung v. Mi Sin*, U.B.R. 1908, 2nd Qr., Civil Procedure, p. 17. In *Brown v. Chase*, Walk. (Mich.), 43, which was a suit for the foreclosure of a mortgage, the application for a receiver was made nearly three years after the institution of the suit. The Court in refusing the application said:—"The complainants have come too late with this motion. They filed their bill, August 13, 1839, nearly three years ago and, for aught that appears from their petition, might with due diligence have obtained a decree long before this time, and had the mortgaged premises sold. If they were entitled to a receiver their neglect to apply for his appointment at an earlier day should be construed as a waiver of their right. Motion denied."

Courts of Equity in England have always, on general principles of their own, discountenanced the *laches* and neglect of suitors, and refused relief unless sued for within a reasonable time and with reasonable diligence. "A Court of Equity," said Lord Camden, "by its own proper authority, always maintained a limitation which prevented its being called into activity, unless at the requisition of conscience, good faith, and reasonable diligence."<sup>82</sup>

Where the law fixes a definite period of limitation within which to bring a suit or make an application, delay for any length of time short of such a period would not affect the rights of the plaintiff or defendant. Mr. Justice Holloway, in *Peddammuthulaty v. N. Timma Reddy*<sup>83</sup> lays down that, where the statute of limitation applies, mere *laches* short of the prescribed period is no bar whatever to the enforcement of a *right absolutely vested* in the plaintiff at the period of suit. Mr. Justice Turner, in the case of *Uda Begam v. Inamuddin*<sup>84</sup> assents to this dictum with the qualification that it applies to cases in which a suitor seeks some relief, which, if he proves his case, the Court is bound to grant, and has no discretion to refuse. In a Bombay case<sup>85</sup> Mr. Justice West lays down a somewhat extreme rule, that, even where a plaintiff sues for a mandatory injunction, his legal right to relief continues

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(82) See Brown on Limitations, p. 514. The principles which guide Courts of Equity in England are thus stated by Lord Chelmsford :—"When a person is obliged to apply for the *peculiar relief* afforded by a Court of Equity to enforce the performance of an agreement, or to declare a trust, or to obtain any other right of which he is *not in possession*, and which may be described as an *executory* interest, it is an invariable principle of the Court that the party must come promptly, that there must be no unreasonable delay, and, if there is anything that amounts to *laches* on his part, Courts of Equity have always refused relief. With regard to interests which are *executed*, the consideration is entirely different. There mere *laches* will not of itself disentitle the party to relief from a Court of Equity, but a party may by standing by, as it has been metaphorically called, waive or abandon any right which he may possess, and which, under the circumstances therefore, Courts of Equity may say he is not entitled to enforce; where, therefore, on principles peculiarly equitable, a person applies to a Court of Equity to do for him that to which his bare vested rights would not entitle him to, a Court of Equity is entitled to say, and does say, 'you are entitled to no favour; you were bound to come within a reasonable time.'" *Clarke v. Hart*, 6 H.L.C. 633. See also Mitra's Law relating to Limitation and Prescription, 4th Ed., 1905, pp. 74, 75.

The acquiescence of an agent, when acting within the scope of his authority, is binding on the principal; but in order that it should be binding the agent must be acting within the scope of his authority. *Att.-Gen. v. Briggs*, 1 Jur. N.S. 1084; *Miles v. Tobin*, 16 W. R. 465.

A corporation or company may be bound by acquiescence as well as an individual (*Laird v. Birkenhead Railway Co.*, John 500); but the rules respecting acquiescence which apply to an individual do not apply with the same strictness to a corporation or company. *Carriers' Co. v. Corbett*, 2 Dr. & Sm. 355; Kerr on Injunctions, 3rd Ed., p. 17.

(83) 2 M.H.C. 270.

(84) 1 A. 82.

(85) *Jamnadas v. Atmaram*, 2 B. 133.

until it is barred by limitation, that the Courts cannot lay down any shorter period for its assertion, and that even the discretional power of the Court as to injunctions cannot, by reason of mere delay, be exercised against the plaintiff, except where new rights and interests have meanwhile come into existence, or where the other party will be unduly prejudiced by the relief being granted after such delay.<sup>86</sup>

According to Mr. Justice Wilson of the Calcutta High Court, discretionary relief should not, as a rule, be granted if there has been avoidable *delay*, although the plaintiff has not waived his rights by acquiescence, and although he had given notice and protested against the invasion of his right.<sup>87</sup>

Where, the matter, however, is of a purely equitable<sup>88</sup> nature, as in the case of the appointment of receiver, Courts of Equity will apply the doctrine of *laches* according to discretion regulated by precedents and the particular circumstances of the case. If an argument against relief, which otherwise would be just, is founded upon simple *laches* or mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of such argument is tried upon principles substantially equitable.<sup>89</sup> Where no new rights and interests have meanwhile

(86) See Mitra's Limitation, 4th Ed., 1905, pp. 71-73, where the question is fully discussed.

(87) Per Petheram, C.J., and Wilson, J., in *Benode v. Soudaminy*, 16 C. 252 (265).

(88) Angell on Limitation, S. 26, note.

A less strong degree of acquiescence is sufficient to disentitle a party to an interlocutory injunction or a receiver than is required to debar him from relief at the hearing of the cause. At the hearing of the cause it is the duty of the Court to decide upon the right of parties, and the dismissal of the bill upon the ground of acquiescence amounts to a decision that a right which has once existed is absolutely and for ever lost. In dismissing a bill upon interlocutory application, the Court does not conclude a right, but merely refuses, in the exercise of its discretion, to interfere summarily in favour of a party who has not shown due diligence in making the application (*Johnson v. Wyatt*, 2 D.J. & S. 18, 25). "A short acquiescence," said Lord Langdale, in *Gordon v. Cheltenham Railway Company*, 5 Beav. 233, "may properly induce the Court not to interfere *ex parte*. A longer acquiescence may, under the circumstances, throw serious doubt upon the right of the plaintiff, and induce the Court not to interfere by interlocutory order even when applied for on notice. But when acquiescence is used as an argument in support of a demurrer, there must, to make it effective, be such an acquiescence as wholly to disentitle the plaintiff to any relief. It must be assumed that the plaintiff had originally a right, but that he has altogether deprived himself of it by acquiescence."

(89) In the case of *Lindsay Petroleum Company v. Hurd*, L.R., 5 P.C. 221 (239), the Lord Chancellor (Lord Selborne) in delivering the judgment of their Lordships of the Privy Council, said:—"The doctrine of *laches* in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect, he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place

come into existence, or where the other party would not be unreasonably prejudiced by the remedy being afterwards asserted, such delay will, in general, be no bar to a plaintiff's right to relief.<sup>90</sup> Where the question is not one of title to recover property,<sup>91</sup> and the plaintiff at the time of suit has no absolutely vested right to the particular relief which he seeks (it being discretionary with the Court to grant it or not), the principles of equity, in the absence of a statutory provision, require that the party must come promptly and as early as he reasonably can.<sup>92</sup>

him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy." *Earlanger v. New, S.P. Co.*, 3 App. Cas. 1230. Lord Penzance (at p. 1231, 3 App. Cas.) says: "Delay, as it seems to me, has two aspects. Lapse of time may so change the condition of the thing sold, or bring about such a state of things that justice cannot be done by rescinding the contract subject to any amount of allowances or compensations. This is one aspect of delay, and it is in many cases particularly applicable to property of a mining character. But delay may also imply acquiescence, and in this aspect it equally bars the plaintiff's right for such a contract, as is now under consideration, is only voidable and not void." Lord O'Hagan, at p. 1259 of the same report, says: "In matters of this kind, every case must be judged according to its own circumstances. In each the question must be one of degree and the delay which might be sufficient to bar relief, in one condition of things, may be without any effect in another." Lord Blackburn at p. 1279 says: "I think from the nature of the enquiry, it must always be a question of more or less, depending on the degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting the remedy or withholding it." Lord Selborne, at p. 1261, says: "Where acquiescence is a bar to an equitable right, two things are generally necessary—first, that there should have been sufficient knowledge of the facts on which the equity depends; and secondly that there should have been substantial freedom of choice and action, independent of the original influence." In *Rochevoucauld v. Bonstead*, (1897) 1 Ch. 196, at pp. 209, 210, 211, the Court (Lord Halsbury, L.C., Lindley and Smith, L. JJ.) adopted and acted upon the opinion expressed by Lord Blackburn in *L. R. 3 App. Cas.*, p. 1279. The equitable rule so well stated in the judgment of the Privy Council in *Lindsay Petroleum Company v. Hurd*, has no application except from the time when the party against whom it is sought to apply it was sufficiently acquainted with his rights to enable him to assert them, and when those rights are to avoid gifts obtained by undue influence, free from that influence. (*Allcard v. Skinner*, 36 Ch. D. 145 (163). Where a plaintiff comes to the Court to enforce a legal right, his delay in taking proceedings is no defence, if it has not continued long enough to bar his legal right. The case is different where the plaintiff endeavours to enforce an equitable right, or where relief is sought merely on equitable grounds. (*In re Maddar*, 27 Ch. D. 523).

(90) See *Jamnadas v. Atmaram*, 2 B. 133 at p. 138.

(91) See *Juggernath Sahoo v. Syud Shah*, L. R. 2 I. A. 48=23 W.R. 99, P.C.

(92) *Clarke v. Hart*, 5 H.L.C. 633. The rule that a plaintiff must be prompt applies to the discretionary jurisdiction of the Court. *Fullwood v. Fullwood*, 9 Ch. D. 176 at p. 178.

In *Smith v. Clay* (3 Br. Ch. C. 620), Lord Camden said:—"A Court of Equity, which is never active in relief against conscience, or public convenience, has always refused its aid



In applying the doctrine of *laches*, apart from the statutes of limitations, to cases in which equitable relief is sought after long delay, "It is not only *time* but the *conduct* of parties which has to be considered."<sup>93</sup>

"*Laches*, like limitation, practically deprives the plaintiff of his remedy. Acquiescence, like prescription, virtually destroys his *right*. But *laches* and acquiescence depend upon general principles, while limitation and prescription depend upon express law. The former are conclusions drawn from the facts of each particular case, while the latter are

to stale demands, where the party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this Court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive and does nothing. *Laches* and neglect are always discountenanced, and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this Court. '*Expediit reipublice ut fit finis litium*' is a maxim that has prevailed in this Court in all times. So in *Darely v. The Queen*, 12 Cl. and F. 520 a case of Quo Warranto, Lord Brougham said:—"If there is not this remedy there really is no other. It is necessary there should be this remedy, or else a case like the present would be remediless."

To entitle a party to specific performance (and it may be remembered that the appointment of receiver is also a form of specific relief, see S. 5 of the Specific Relief Act) he must show that he has not been in default in performing his own part. Gross *laches*, or application for relief after long lapse of time unexplained, will bar his relief."

(93) *Rochevoucauld v. Bonstead*, 1897, 1 Ch. 196. But mere *laches* should be distinguished from acquiescence. "*Laches* and acquiescence," says Mr. Banning, "are often inaccurately used as identical in meaning. In fact, however, there is a great distinction between them." Banning on Limitation p. 246. Lapse of time or delay in suing, unaccounted for by disability, ignorance (of fact, if not of law) or other circumstances, constitute *laches*. (Lewin on Trusts, 7th Ed., p. 743). *Laches* is merely passive, while even indirect acquiescence implies almost active assent. (Banning, p. 246; Lewin, p. 744). *Laches*, or delay, is evidence of acquiescence when the conduct of the parties, during the interval, raises a presumption of assent. (16 C. 252 at p. 261). Acquiescence—that is, indirect acquiescence—has been defined as *acquiescence under such circumstances as that assent may be reasonably inferred from it*, and as such, is no more than an instance of the law of *estoppel* by words or conduct. (Per Thesiger, L.J., in *De Bussche v. Alt*, 8 Ch. D. 286 at p. 314). Acquiescence means a standing by with a knowledge of one's rights, and is a matter quite distinct from mere delay. Per West and Haridas, JJ., 1883, Branson's Digest of Printed Judgments, Bombay, 99. Even Lord Selborne appears to have sometimes used the word "acquiescence" for "*laches* or delay." (See 3 App. Cas. at p. 1261.)

The jurisdiction of the Court to interfere by way of appointment of receiver is governed upon strict equitable principles. The Court, where its summary or discretionary interference is invoked, always looks to the conduct of the party who makes the application, and will refuse to interfere, even in cases where it acknowledges a right, unless his conduct in the matter is free from blame. (*Blakemore v. Glamorganshire Railway Co.*, 1 M. & K. 168). He must be able to satisfy the Court that his own acts and dealings in the matter have been fair and honest, and free from any taint of fraud or illegality. (*Bateman v. Ramsay*, Sau. & Sc. 459; *Williams v. Roberts*, 8 Ha. 325). A man who has by his conduct put himself in the wrong, or who has by his own conduct brought about the state of things of which he complains, cannot invoke the aid of the Court. (*Lloyd v. London, Chatham and Dover Railway Co.*, 2 D. J. & S. 568). If in his dealings with the person against whom he seeks relief, or with third parties, he has acted in an unfair or inequitable manner, he cannot have relief. *Nicholson v. Hooper*, 4 M. & C. 179; *Pope v. Lord Duncannon*, 9 Sim. 179; *Edelsten v. Vick*, 11 Ha. 86.



matters of inflexible law. A positive law of limitation and prescription applies even when there is no actual laches or acquiescence.”<sup>94</sup>

As the law of limitation in British India is directly applicable to all kinds of actions and suits, simple laches or delay for any length of time, short of the law-defined period, will not be an absolute bar to a plaintiff's suit for relief.<sup>95</sup> But a considerable delay, if unexplained, may raise a presumption,<sup>96</sup> against the right which the plaintiff seeks to enforce, and induce the Court to look with very great jealousy at the evidence produced in support of it.<sup>97</sup> Such laches may also be a ground for refusing a relief which the Court has a *discretion* to grant or refuse,<sup>98</sup> where innocent persons would be unduly prejudiced by such relief being granted.<sup>99</sup> In a recent case, for a *declaration* of rights, Subramania Ayyar and Davies, JJ., say:—“Inasmuch as in this country a period of limitation is prescribed even for suits where the grant of relief sought is within the discretion of the Court, mere lapse of time short of the period of limitation should ordinarily be held not to be a good ground for refusing relief. Even according to the English decisions, “mere delay” is not a bar to a suit for equitable relief. To operate as a bar to relief the delay should be such as to amount to waiver of the plaintiff's right by acquiescence, or where by his conduct and neglect, he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted.”<sup>100</sup>

(94) *Mitra's Limitation*, 4th Ed., 1905, p. 69.

(95) “Where there is a statute of limitations, the objection of simple laches does not apply.” (*Archbold v. Scully*, 9 H.L.C. 348). “Mere laches short of the period prescribed by the statute of limitation is no bar whatever to the enforcement of a right absolutely vested in the plaintiffs at the period of suit.” 2 M.H.C. 270, at p. 273. Except, in cases where the plaintiff seeks a kind of relief which the Court has discretion to grant or refuse. (*Uda Begum v. Inamuddin*, 1 A. 82 at p. 86). See also *Juggernath Sahoo v. Syud Shah*, 23 W.R. 99; *Jamnadas v. Atmaram*, 2 B. 133, 138.

(96) *Modhoosoodhan Sandial v. Soroop Chunder Sircar*, 7 W.R.P.C. 73. See also Cal. Sud. Sel. Rep. Vol. V, p. 123, and Vol. IV, pp. 89, 130, cited in Macpherson's Civil Procedure, Appendix, 203; and *Sham Chand v. Kishen Prosad*, 18 W.R. 4 P.C. Such a presumption, however, is not pressed against an infant or a Hindu female. (*Ramamani v. Kulanthai*, 17 W.R. 1 P.C.).

(97) *Musst. Ameeroonnissa v. Musst. Ashruffoonnissa*, 17 W.R. 259, P.C.

(98) The jurisdiction of the Courts in India to decree the specific performance of contracts and the rectification or cancellation of instruments, to grant injunctions, or receiverships and to make declarations of status or right, is discretionary. (Act I of 1877, Ss. 12, 22, 31, 42 and 52). See *Mrinomoyee v. Bhoobun Moyee*, 23 W.R. 42; *Mokund Lall v. Chotay Lall*, 10 C. 1061; *Uda Begum v. Inamuddin*, 1 A. 82.

(99) *Pickering v. Stampford*, 2 Ves. Jr. 272. See also *Lindsay, Petroleum Company v. Hurd* (L.R. 5 P.C. 239) and *Durell v. Pritchard* (L.R. 1 Ch. 244), both of which are referred to in *Jamnadas v. Atmaram*, 2 B. 133.

(100) *Athikarath v. Erathanikat*, 21 M. 42. See also 1897, 1 Ch. 196, at pp. 209, 210, 211. See this whole subject of effect of laches fully dealt with in *Mitra's Limitation*, 4th Ed., 1905, Chapter IV, pp. 62-96.

Receiver not generally appointed when there is already another receiver appointed over same property.

The Court will, as far as possible avoid the appointment of a receiver where there is already another receiver who is in possession of the property or where it is in the possession of some other officer of the Court who is capable of efficiently carrying out the duties of a receiver.<sup>101</sup>

The same rule will apply even if the first receiver was appointed by some other Court; because one Court will not, as a general rule, interfere with another Court, in its administration of justice.<sup>102</sup> There may however be special circumstances which makes such interference necessary.<sup>103</sup>

Two receivers appointed over different portions of property comprised in the suit.

It is also open to the Court to appoint two persons as receivers over different portions of the property, which is the subject-matter of the same suit.<sup>104</sup>

Existence of other means by which receiver may be appointed (as) by appointment out of Court, no bar to appointment by Court.

The fact that the person applying for the appointment has a power to appoint a receiver outside the Court is no bar to the appointment of receiver by Court.<sup>105</sup> So also the fact that the applicant has other means by which to obtain the appointment of a receiver than an application to the Court is no ground for refusing his application.<sup>106</sup> Nor does the existence of an arbitration clause applicable to all the points in the suit in regard to the property which is the subject-matter of the suit, a ground for refusing the appointment of a receiver if in other respects a receiver is necessary.<sup>107</sup>

(101) *Perry v. Oriental Hotels Co.*, (1870) L.R. 5. Ch. 420; *British Linen Co. v. South American and Mexican Co.*, (1894) 1 Ch. 108; See also chapter on "Jurisdiction to appoint" and "Over what property appointed." See also on this point *Madneswar Singh v. Mahamaya Prosad*, 15 C.W.N. 672=13 C.L.J. 487; *Khubsarat v. Sarodacharn Guba*, 14 C.L.J. 526=12 Ind. Cas. 165=16 C.W.N. 126; and *Bidya Prosad v. Asrafi*, 17 C.W.N. 1070=20 Ind. Cas. 269=40 C. 862, where it was held that the Court has jurisdiction to appoint a receiver over property over which a receiver has already been appointed by a Civil or Criminal Court.

(102) *Nothard v. Proctor*, (1875) 1 Ch. D. 4. See also *Re Connolly Brothers, Ltd.*, (1911) 1 Ch. 731; *Jopson v. James*, (1908), 77 L. J. Ch. 824. See also Chapter on "Jurisdiction to appoint."

(103) (*Ibid.*).

(104) See *Dan Prasad v. Gopi Kishan*, 11 A.L.J. 973, where the plaintiff and defendant were ordered to be in possession as receivers of different portions of the property comprised in the suit, until its final determination.

(105) *Re Maskelyne British Typewriter, Ltd.*, (1898) 1 Ch. 133.

(106) *Fripp v. Chard Railway Co.*, (1853) 11 H. 241.

(107) *Law v. Garrett*, (1878) 8 Ch. D. 26; *Halsey v. Windham*, (1882) W. N. 108; *Compagnie du Senegal v. Woods*, (1883) W. N. 180; 53 L. J. Ch. 166; *Pini v. Roncoroni*, (1892) 1 Ch. 633.

The appointment of a receiver does not take effect or date back by relation to a period prior to his appointment.<sup>108</sup> The rights of a receiver arise only on the date of his appointment and not before.<sup>109</sup> The appointment is complete on the making of the order of appointment, although he may not be able to take actual possession of the property until the security is approved.<sup>110</sup>

The appointment of a receiver, even though made subject to his giving security, operates as immediate delivery of land in execution: and when the security is afterwards given, the order relates back to the date when it was made.<sup>111</sup>

The appointment of a receiver and manager of a business may operate to discharge the servants employed therein.<sup>112</sup>

It is a settled rule that the order of appointment does not affect third parties until the appointment is completed and perfected. But as regards the defendant, if he was present in Court during the hearing of the application for receivership and had knowledge of the fact that an order for the appointment of a receiver of his estate had been made, he would be guilty of contempt of Court if he removes a portion of the property so as to put it beyond the reach of the receiver and thus attempts to evade the decree.<sup>113</sup> In such a case it is no answer to the contempt proceedings that the order of appointment had not been properly drawn up.<sup>114</sup> The reason of this rule is clearly explained by Lord Hardwicke, in the case of *Skip v. Harwood*<sup>115</sup>. His Lordship bases it on grounds of necessity and expediency, and says, that if the rule were to be "otherwise, it would be extremely easy to elude decrees, some of which in their nature require a considerable length of time before they can be completely drawn up."<sup>116</sup>

(108) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas 356.

(109) *Mahamed Kasim v. Panchapakesa Chetti*, 35 M. 578.

(110) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas 356 (Referring to *Quincey v. Hunphreys*, 145 U.S. 82; *High on Receivers*, S. 138 and *Beach on Receivers*, S. 202.)

(111) *Ex parte Evans*, 13 C.D. 252; but secus in case of personal estate (*Ridout v. Fowler* (1904), 1 Ch. 658). See, too, *Re Shephard*, 43 C.D. 133.

(112) *Reid v. Explosives Co.*, 19 Q.B.D. 264.

(113) See *Skip v. Harwood*, 3 Atk. 564.

(114) *Ibid.*

(115) *Ibid.*

(116) *Ibid.*

As regards the rights of third parties, the appointment of a receiver will not generally be allowed to take effect or date back by relation to a period prior to his appointment.<sup>117</sup>

Where the parties have consented to or acquiesced in the order appointing a receiver, or where, having notice of the application for the appointment, they fail to appear and object to the application, or where, having a right of appeal from the order of appointment, they do not appeal, but submit to the order, they cannot be allowed to question the validity of the appointment in any subsequent stage of the suit.<sup>118</sup>

**Effect of consent or acquiescence in the order of appointment.**

Nor can the order of appointment be questioned in any collateral proceedings. It is a settled principle of law applicable to all judicial proceedings that where a decree or order has been made by a Court of competent jurisdiction, it cannot be challenged collaterally. This principle applies also to an order of Court in the matter of the appointment of a receiver.<sup>119</sup>

Thus upon a mere formal motion to substitute one person in place of another as receiver in the action, the opposing party is not at liberty to examine the regularity of the original appointment, or the regularity of the proceedings had in the suit, since this would operate as a surprise upon the moving party, and he is entitled to notice of such objections.<sup>120</sup>

**Appointment of a successor to deceased receiver.**

Where a receiver appointed by the Court dies, a successor is not always appointed as a matter of course. Something more must be shown than the mere fact of the death of the former receiver.<sup>121</sup>

In an American case it was held that where the receiver appointed on the application of the plaintiff died, the defendant has no right to get the appointment of a successor as a mere matter of course. Something more than the mere death of the former receiver, some necessity for a successor, some facts to show that justice and necessity require the appointment of a successor, must be laid before the Court.<sup>122</sup>

(117) *Artisan's Bank v. Treadwell*, 34 Barb. 553.

(118) *Post v. Door*, 4 Edw. Ch. 412: The order of appointment cannot be questioned collaterally. *Poreshnath v. Omerts*, 17 C. 614 (618).

(119) *Florence Gas, etc., Co. v. Henby*, 101 Ala. 15; *Greenawall v. Wilson*, 52 Kan. 109; 34 Pac. 403; *Poreshnath v. Omerto*, 17 C. 614 (618); see also Alderson on Receivers, 1905, S. 151, pp. 181-182.

(120) *Fassett v. Tellmadge*, 13 Ab. Pr. 12.

(121) *De Leonis v. Walsh*, 148 Cal. 254; 82 Pac. 1047 (American decision).

(122) *Ibid.*

Where the order appointing a receiver does not in terms fix or limit

**Duration of receivership.** the duration of the receivership, it will be taken to have been limited to the time of the pendency of the suit, unless the receiver is sooner discharged.<sup>123</sup>

**Power of Court to cancel order appointing receiver.** A Court which has passed an order appointing a receiver in any case has power subsequently to hold an enquiry as to whether the order should remain in force or not, and if necessary to cancel the order of appointment.<sup>124</sup>

**Appointment of receiver not always judicial act.** It cannot be said that a receiver can only be appointed by a "Judicial Act," in the sense that he must always be appointed by an order of the Court in the course of its administration of justice. We have already seen that a receiver need not necessarily be appointed by the Court, and that the parties may have a receiver appointed, out of Court, under an express or implied power so to appoint contained in some document. Such a power may generally be found in mortgage deeds, trust deeds and some such other documents.<sup>125</sup> In such cases it can hardly be said that the appointment is a judicial act. So also, the Local Government or other officer or department of Government may be empowered to appoint receivers for general or special purposes. In such cases also the appointment cannot be called a judicial act.

**Damages may be recovered for procuring wrongful appointment.** Where an order for appointment of receiver was wrongfully obtained by a party, either by suppression of material facts, or by wilful misstatement of facts, the order of appointment may be set aside. The aggrieved party may also obtain damages from the person who had wrongfully procured the appointment.<sup>127</sup>

(123) *Weems v. Lathrop*, 42 Tex. 207.

(124) *Ranganayagi Amal v. Mahali Pillay*, 4 L. B. R. 356 referring to Woodroffe on Receivers, pp. 269 and 283. See also *Srimathi Mathuria v. Shibdayal*, 14 C.W.N. 252 = 5 Ind. Cas. 27; As to the power of court to remove receivers, see *Sivagnathammal v. Arunachalam Pillai*, (1911) 2 M.W.N. 75 = 21 M.L.J. 821; *Subrahmania Iyer v. Muthulakshmiammal*, (1912) M.W.N. 1208.

(125) See Trustees' and Mortgagees' Powers Act (XXVIII of 1866), Ss. 6, 12—19; Act VII of 1913 (Companies), S. 118.

(126) See Act III of 1907 (Provincial Insolvency), S. 19 which empowers the Local Government to appoint a receiver called "Official receiver" for the purpose of administering the estates of bankrupts. It has been held in an American case that the right of the legislature of a state to enact a law, authorising the Governor of the state to appoint a receiver of an insolvent banking corporation, is not a violation of the constitutional provision limiting each department of the Government to its own particular sphere; and that the appointment of a receiver under such law being in no manner a decree of judgment of a Court of Law cannot be said to be a "judicial act." *Carey v. Giles*, 9 Ga. 253.

(127) See *Thornton, etc. v. Bertherion*, 32 Mont. 80; 80 Pac. 10. *Joslin v. Williams*, 76 Neb. 594.



Where the plaintiff seeks to have a receiver appointed on an *ex parte* motion, and before service of notice on the defendant, an undertaking as to damages will be required from the applicant.<sup>128</sup>

In such cases, the fair rental value of the premises put into the possession of the receiver, and the costs of the proceedings which the aggrieved party had to institute for the purpose of setting aside the order of the appointment of receiver, including the services of a counsel in such proceedings, would be a proper measure of compensation which may be awarded to the injured party.<sup>129</sup>

The fact that a receiver has been appointed over the suit-property on the application of the plaintiff is no bar to his withdrawing the suit if he deems it necessary.<sup>130</sup> But if the plaintiff wants to withdraw the suit with liberty to bring a fresh suit, the Court would be then entitled to impose such conditions as it deems necessary to be performed before the liberty is granted.<sup>131</sup>

By the mere fact of ordering the appointment of a receiver the Court does not acquire such an absolute control over the suit, as to deprive the plaintiff of the privilege of withdrawing his suit if he sees fit.<sup>132</sup>

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(128) *Taylor v. Eckersley*, 2 C.D. 302; *Minter v. Kenteti*, 72 L.T. 186.

(129) *Joslin v. Williams*, 76 Neb. 594.

(130) *White v. Lord Westmeath*, Beat. 174; See also Civil Procedure Code, 1908, O. XXIII, r. 1.

(131) See Civil Procedure Code, 1908, O. XXIII, r. 1.

(132) *White v. Lord Westmeath*, Beat. 174. But in any case the plaintiff would be liable for damages, if the appointment had been obtained on insufficient grounds, or by misrepresentation or fraud.

## CHAPTER IV.

### JURISDICTION TO APPOINT.

Nature of jurisdiction in general.

Jurisdiction cannot be conferred by consent of parties.

Jurisdiction of the late Supreme Courts and the present High Courts.

Jurisdiction of Courts as regards the subject matter.

Jurisdiction of Courts as regards persons.

Presumption in favour of jurisdiction of Courts.

Property with regard to which a receiver can be appointed must be the subject of litigation in that Court.

The fact that it is the subject of litigation in a Court subordinate to such Court cannot give the Superior Court jurisdiction to appoint receiver.

Property must be such as the Court can deal with it in the pending suit.

Jurisdiction to appoint receiver on an *ex parte* motion.

Jurisdiction of Court to appoint receiver of its own motion.

Jurisdiction of High Court in matters of receivership same as that of Courts in England.

Receiver appointed by the High Court—Direction by the Subordinate Judge to furnish accounts—Jurisdiction.

Power of High Court to appoint after leave to appeal to Privy Council is granted.

After special leave to appeal is granted by Privy Council.

Right of appeal to Privy Council from order appointing receiver.

Power of appellate Court with regard to appointment of receivers.

Appointment of receiver on one ground—Continuation of appointment by appellate Court on different ground.

Review of order of appointment by appellate Court.

Powers of revision of order relating to appointment of receivers.

Where appellate Court appoints receiver—If jurisdiction of lower Court ceases.

Power of Court to appoint receiver after decree.

Power of Court to appoint receiver of property or against persons situate out of the limits of its jurisdiction.

Jurisdiction of High Court over assets realised outside its original jurisdiction.

Power of Court to order receiver to pay debts.

Power of Court to empower receiver to raise loan on the estate.

Power of Court to discharge and remove receiver.

Power of Court to cancel order appointing receiver.

Power of Court to appoint receiver of property with regard to which a criminal offence has been committed.

Jurisdiction of criminal Court to interfere with possession of receiver.

Power of Civil Court to appoint a receiver of property with regard to which an order for maintenance of possession has been made by a criminal Court.

- Power of Civil Court to appoint receiver in supersession of receiver previously appointed by a Criminal Court, under S. 146 of the Code of Criminal Procedure.
- Jurisdiction to appoint receiver of property in hands of common manager.
- Jurisdiction to appoint receiver of property in respect of which a petition for common manager is pending.
- Jurisdiction to appoint receiver in mortgage suit where a receiver has been appointed with regard to same property in previous suit for partition.
- Jurisdiction to appoint receiver in partition suit—Can receiver be appointed over whole property or only plaintiff's share.
- Jurisdiction to appoint receiver in a suit under Religious Endowments Act.
- Jurisdiction to appoint receiver over estate of bankrupt mortgagor—Official Receiver.
- Jurisdiction to appoint receiver over property of a community.
- Duration of receivership.

WE have already seen that, in order to grant an application for the appointment of a receiver in any particular suit, the Court must have jurisdiction to take cognizance of and try such suit.<sup>1</sup>

Jurisdiction, when used in its general sense with reference to a Court of Justice, means the power or authority of judging, and that Court is said to be of competent jurisdiction with regard to a suit or other proceeding, when it has power to hear or determine it or to exercise any judicial power therein.<sup>3</sup> “Jurisdiction,” said West, J.,<sup>4</sup> “according to the exact conception of it, consists in taking cognizance of a case involving the determination of some jural relation, in ascertaining the essential points of it, and in pronouncing upon them.”

Jurisdiction is derived from the Sovereign, and in British India has been conferred by the Charters and Letters Patent of the High Courts, and as regards other Courts by various Acts of the Legislature constituting those Courts, giving them powers and regulating their procedure.<sup>5</sup>

This jurisdiction may be of different kinds: <sup>6</sup> (a) over the parties <sup>7</sup>;

(1) See Chapter III—“Appointment of Receivers”. On this subject see Amir Ali's Code of Civil Procedure Notes under Ss. 9 to 24 and under O. XL., rr. 1—5, which have been constantly referred to in the course of this Chapter.

(2) See per Mahmood, J., in *Nidhi Lal v. Mazhar Husain*, 7 A. 239.

(3) See the question of jurisdiction discussed in Hukm Chand's *Res Judicata*, Ch. V.

(4) *Amritrav v. Balakrishna*, 11 B. 488 (490); See also *Har Prasad v. Jafar Ali*, 7 A. 350.

(5) As to the presumptions affecting jurisdiction, see Ameer Ali's Evidence Act, 4th Ed., notes to S. 114, ill. (e), Hukm Chand, *Res Judicata*, 422.

(6) As to jurisdiction in general, see Ss. 9 to 26 of the Code of Civil Procedure (Act V of 1908).

(7) See Ss. 19—20 of the Code of Civil Procedure (Act V of 1908).

(b) over the subject-matter<sup>8</sup>; (c) local<sup>9</sup>; or (d) pecuniary.<sup>10</sup> Peculiar powers may be given to particular Courts whilst other Courts may be of restricted jurisdiction. But no Court has power to give judgment respecting a matter not submitted to it for decision, even in a suit involving other matters which have been so submitted.<sup>11</sup>

The distinction must be kept between jurisdiction and errors in the exercise of jurisdiction. The proceedings of a Court having jurisdiction over the subject-matter and parties are not void, however erroneous they may be. A judgment is not void simply because it is erroneous. This is evident from the very notion of jurisdiction, which is the power to determine, and not merely the power to determine rightly.<sup>12</sup>

It is a general principle, that whenever jurisdiction is given to a Court by an enactment, and such jurisdiction is only given on certain specified terms contained in the enactment itself, these terms must be complied with in order to create and raise the jurisdiction, for if they are not complied with the jurisdiction does not arise.<sup>13</sup>

Consent cannot give jurisdiction, which is absent as regards the subject-matter<sup>14</sup>, nor probably as regards local or pecuniary<sup>15</sup> jurisdiction. When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process, although they may constitute the Judge their arbiter and be bound by his decision on the merits when these are submitted to him.<sup>16</sup>

**Jurisdiction cannot be conferred by consent of parties.**

(8) See (*Ibid*) S. 16.

(9) See (*Ibid*) S. 17.

(10) See (*Ibid*) S. 15.

(11) See per James, L.J., in *Robinson v. Dhunleep Singh*, 11 Ch. D. 798; *Hukm Chand, Res Judicata*, 451.

(12) *Hukm Chand, Res Judicata*, 473, 482. See also *Amir Hasan Khan v. Sheo Baksh Singh*, 11 C. 6; *Har Prasad v. Jafar Ali*, 7 A. 345 (349). *Badami v. Denu*, 8 A. 111; *Mahomed Suleman Khan v. Fatima*, 9 A. 104.

(13) *Nusserwanjee v. Meer Mynodeen*, 6 M.I.A. 134 (155).

(14) See *Hukm Chand, Res Judicata*, 409; so a receiver cannot be appointed simply because the parties consent, if there be no jurisdiction to appoint, nor necessity for the appointment. See *Riviere on Receivers*, 1912, p. 35.

(15) See *Hukm Chand, Res Judicata*, 411, 412. See also *Velayudam v. Arunachela*, 13 M. 273.

(16) *Ledgard v. Bull*, 9 A. 191, 203, P.C.=13 I.A. 134; *Minakshi Naidu v. Subramanya Sastri*, 11 M. 26, P.C.=14 I.A. 160; *Bebi Ladli Begam v. Bibi Raji Rabia*, 13 B. 650 (suit cognizable by Small Cause Courts alone brought in Court of Joint Subordinate Judge); *Denonath v. Adher Chunder*, 4 C.W.N. 470, 473; *Ashba Mian v. Dinga Churn Law*, 25 C. 146, 151; *Nasserwanjee v. Meer Mynodeen*, 6 M.I.A. 134, 161 (property situate in territory of independent chief); *Lalmonee v. Juddoonath*, 1 Ind. Jur. N.S. 319; *Keshav v. Venayak*, 23 B. 22, 26; *Vishnu Sakharan v. Krishnarao*, 11 B. 153.

The late Supreme Court possessed no Appellate Jurisdiction but a general as well as a local original jurisdiction embracing matters civil as well as criminal. It executed its own writs and processes throughout the provinces and districts, annexed to and made subject to the presidency towns, such provinces and districts being within the limits of its general jurisdiction.

**Jurisdiction of the late Supreme Courts and the present High Courts.**

The jurisdiction of the High Court is, in some respects, analogous to that of the Supreme Court; but is, in other respects, wholly dissimilar. It has an Appellate Jurisdiction, as extensive as that possessed by the late Sudder Court, which it never exercises for the purpose of enforcing its decrees or orders, the same being enforced through the Subordinate Courts: and it has an Extraordinary Original Civil Jurisdiction, and also an Extraordinary Original Criminal Jurisdiction, peculiar to itself. It has, besides, a Civil Jurisdiction, a Criminal Jurisdiction, an Admiralty and Vice-Admiralty Jurisdiction, a Testamentary and Intestate Jurisdiction, and a Matrimonial Jurisdiction.<sup>17</sup>

Generally speaking, with the exception of Small Cause Courts<sup>18</sup> and Revenue Courts,<sup>19</sup> the jurisdiction as regards the subject-matter is not limited, though the power to take cognizance of a particular suit may be affected by its value.

**Jurisdiction of Courts as regards the subject matter.**

"The jurisdiction of a Court, apart from statutory power, can only be exercised over persons who are within its territorial limits.<sup>20</sup> For the exercise of judicial power, this country is divided and subdivided into small local areas, varying for different grades of Courts and generally liable to a change by the Executive Government.<sup>21</sup> The limits of these areas determine the local limits of the Courts' jurisdiction for the trial of original suits and appeals. Personal jurisdiction depends on

**Jurisdiction of Courts as regards persons.**

(17) Ss. 11 and 12 of the Letters Patent, constituting the High Court, relate to its Original Civil Jurisdiction; S. 13 to its Extraordinary Original Civil Jurisdiction; Ss. 21 and 22 to its Ordinary Original Criminal Jurisdiction; S. 23 to its Extraordinary Original Criminal Jurisdiction; Ss. 31 and 32 to its Admiralty and Vice-Admiralty Jurisdiction; Ss. 33 and 34 to its Testamentary and Intestate Jurisdiction; S. 35 to its Matrimonial Jurisdiction; and Ss. 24, 15, and 16 to its Appellate Jurisdiction; See Amir Ali's Civil Procedure Code, notes under S. 9.

(18) See Ameer Ali's Civil Procedure Code, 1908, p. 72.

(19) See as to these *Hukm Chand, Res Judicata*, 268; O'Kinealy's Civil Procedure Code, notes to S. 15.

(20) *Hadjee Kaseem v. Hadjee Isuff*, 6 C.W.N. 829.

(21) See *Hukm Chand, Res Judicata*, 318. See *Compagnia de Mocambique v. British South Africa Company*, (1892), 2 Q.B. 58.



the place of residence or business of the defendant.<sup>22</sup> The case of moveable property attached or under dstraint is an exception to the general rule that personal property has no locality, by which it is not meant that it has no visible locality, but that it follows the person and is governed by the law which governs him.<sup>23</sup>

It is a general rule of law applicable to the case of appointment of receivers as well as every other matter that is brought before a Court for adjudication, that the presumption shall always be made in favour of the jurisdiction of a Civil Court and that it shall not be deemed to have been taken away by the Legislature except by express words or by necessary implication.<sup>24</sup>

**Presumption in favour of jurisdiction of Courts.**

One of the primary rules regarding the power of Courts to appoint a receiver *pendente lite* is that the property with regard to which the receiver is sought to be appointed must be the subject of a pending suit in the Court in which the application is made, either as a Court of the first instance or as a Court of appeal or of revision. Thus, it has been held, that, in spite of the general terms of the Civil Procedure Code, a Court had no jurisdiction to appoint a receiver of property which is not the subject of litigation in that Court.<sup>25</sup>

**Property with regard to which a receiver can be appointed must be the subject of litigation in that Court.**

The mere fact that the property is the subject of litigation in a Court subordinate to the Court in which the application for such appointment is made will not make any difference. A superior Court has no power to appoint a receiver of property with regard to which a suit is pending in a subordinate Court. Thus it has been held that a District Judge has no jurisdiction to appoint a receiver of properties which are the subject of a suit or attachment in other Courts, even though such Courts may have been subordinate to his Court.<sup>26</sup>

**The fact that it is the subject of litigation in a Court subordinate to such Court cannot give the superior Court jurisdiction to appoint receiver.**

(22) See the Code of Civil Procedure, Ss. 16-23.

(23) *Companhia de Mocambique v. British South Africa Co.*, (1892) 2 Q.B. 397, per Lord Esher.

(24) *Ram Narain Singh v. Lachmi Narain Deo*, 17 C.W.N. 408 (409).

(25) *Musamat Pounchbai v. Lekhraj*, 3 S.L.R. 118=4 Ind. Cas. 605.

(26) Per Trevelyan and Beverley, JJ., in *Latafut Hossein v. Anunt Chowdhry*, 23 C. 517. The following observations of Trevelyan and Beverley, JJ., throw light on this point:—

"Now the first question which we have to decide is whether the District Judge had any jurisdiction at all to appoint a receiver of property, the subject of a suit or under attachment in other Courts, even though such Courts may have been subordinate to his Court. The District Judge was of opinion that he had no such jurisdiction, and that was the ground

Further, the property must be such that the Court has power to deal with the same in the pending suit. Thus, it has been held that O. XL, r. 1, of the Code of Civil Procedure, 1908, does not empower the Court to appoint a receiver of properties which cannot be dealt with by the Court in the suit.<sup>27</sup>

Property must be such as the Court can deal with it in the pending suit.

upon which he refused the application. We think he was right in so doing. Section 503 of the Code of Civil Procedure in our opinion clearly intends to give the power only to the Court in which the suit is brought, or by which the property has been attached. There is no doubt that a Court cannot appoint a Receiver, except it has seisin of the property, either by a suit being pending or by proceedings in execution of decree made in a suit being pending and attachment having been made. Also it is only the Court in which a proceeding is pending, and which has thereby the property under its control that can appoint a receiver. No case has been mentioned to us where any Court has under S. 503 exercised jurisdiction over property which was the subject-matter of a suit in another Court, or under attachment by another Court. It is contended that S. 505 practically gives District Judges jurisdiction in this matter. But S. 505, it must be borne in mind, is not an enabling section at all. It is a section limiting the powers given to the Courts by S. 503. It excludes from the operation of S. 503 all Courts except High Courts and District Courts. It does not say that High Courts and District Courts are to exercise this power in matters which would ordinarily, if they possessed the powers, have to be dealt with by Subordinate Courts. On the contrary, it expressly provides a procedure for cases pending before Subordinate Courts. It is for the Judge of the Subordinate Court first of all to consider whether it is expedient that a receiver should be appointed, that is to say, to consider the matters referred to in S. 503, and to that extent to decide the questions as if he were a Court having power to appoint a receiver, and then to nominate a person for the appointment. He has no power to go further and appoint a receiver, but must submit to the District Court the name of the person with the grounds for his nomination, and it is for the District Court on the receipt of such report and not under other circumstances to authorise the Subordinate Court to appoint the person so nominated, or to pass such other orders as it thinks fit. It is only, we think, where the procedure contained in S. 505 has been adopted that a District Court can appoint a receiver in suits pending before or attachments made by Subordinate Courts." Per Trevelyan and Beverley, JJ., in *Latafut Hossein v. Anunt Chowdhry*, 23 C. 517 at pp. 519-520. N.B. :—Some of the observations regarding the want of direct power in Subordinate Courts to appoint receivers are not now good law, as the present Civil Procedure Code, O. XL, r. 1, gives such powers to Subordinate Courts as well. See Chap. I, *supra*.

(27) *Marulasidda Raji v. Siddalinga Raja*, 17 Ind. Cas. 16. The following remarks of Sundara Aiyar and Sadasiva Aiyar, JJ., may also be noted :—"The plaintiff in his plaint sued to recover the properties in schedule A appended to it. When he put in his application for the appointment of a receiver, he appended another schedule to it, which he called B. The affidavit also stated that the suit was for the recovery of the properties in schedule A. It seems to be fairly clear that the properties in schedule B were not part of those included in schedule A to the plaint. There is nothing in the plaint which can be taken to make the properties in schedule B appended to the receiver petition the subject matter of the suit. We cannot agree with the learned Counsel for the respondent that r. 1, O. XL, of the Code of Civil Procedure, empowers the Court to appoint a receiver of properties which cannot, in any way, be dealt with by the Court, in the suit. A receiver, therefore, cannot be appointed in this case to take charge of the properties in schedule B appended to the plaintiff's petition." Per Sundara Aiyar and Sadasiva Aiyar, JJ., in *Marulasidda Raji v. Siddalinga Raja*, 17 Ind. Cas. 16.

As we have already seen, there is no doubt that our Courts have jurisdiction to grant an application for receivership on an *ex parte* motion.<sup>28</sup> But this power should be exercised only in exceptional cases and where very strong grounds exist for such immediate action.<sup>29</sup>

Jurisdiction to appoint receiver on an *ex parte* motion.

So also the Courts have jurisdiction to appoint a receiver of its own motion, if it appears that circumstances necessitate such an appointment.<sup>30</sup> But here also very strong grounds must exist for the Court to take this extraordinary step of appointing a receiver of its own motion without an application being made by either party.<sup>31</sup>

Jurisdiction of Court to appoint receiver of its own motion.

Jurisdiction of High Court in matters of receivership same as that of Courts in England.

As regards the power to appoint receivers, the High Court possesses the same powers as are possessed and exercised by the Courts in England under the Judicature Act.<sup>32</sup>

Receiver appointed by the High Court — Direction by the Subordinate Judge to furnish accounts — Jurisdiction.

Where a receiver is appointed by the High Court, pending an appeal, no other Court has power to make an order or give any directions as supplementary to those given by the High Court, or without authority given by that Court.<sup>33</sup>

Power of High Court to appoint after leave to appeal to Privy Council is granted.

Order XLV, r. 13 of the Civil Procedure Code applies where an application for appointment of a receiver is made after leave is granted to appeal to the Privy Council. The principles, however, on which a receiver would be appointed, must and shall be the same as mentioned in Order XL, rr. 1-5 of the Code.<sup>34</sup>

(28) See *Ranganayagiammal v. Mahali Pillai*, 4 L.B.R. 356; See also Chapters on "Appointment of Receivers—General Principles" and "Practice and Procedure" where the subject is dealt with in full.

(29) *Jiwani v. Labhu Ram*, 107 P.R. 1908=12 P.L.R. 1909=4 Ind. Cas. 694.

(30) See *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973=36 A. 19=22 Ind. Cas. 59 and other cases noted under the Chapters on "Appointment of Receivers—General Principles" and "Practice and Procedure"; see also *Bidya Prasad v. Asrafi Singh*, 17 C.W.N. 1070 at pp. 1071. 1072=20 Ind. Cas. 269=40 C. 862.

(31) *Mussammatt Bhaht Bhari v. Isa Shah*, 62 P.W.R. 1911. See the Chapter on "Practice and Procedure" where this subject is dealt with in full.

(32) *Jaikissondas Gangadas v. Zenabai*, 14 B. 431.

(33) *Janaki Ammal v. Narayanaswami Iyer*, 4 M.L.T. 268. (Referring to *Ramadhan Chetty v. Narayanan Chetty*, 27 M. 602).

(34) *Mi Shwe Ma v. Mi Mi*, 12 Ind. Cas. 198=4 Bur. L.T. 241.

Where after refusal by the High Court to grant leave to appeal to

After special  
leave to appeal  
is granted by  
Privy Council.

His Majesty in Council, special leave has been granted by the Judicial Committee, the High Court has no power to entertain an application for appointment of a receiver of the property in dispute under rule 13 of

O. XLV of the Civil Procedure Code of 1908.<sup>35</sup>

It would appear that there is no right of appeal to the Privy Council

Right of appeal  
to Privy Council  
from order ap-  
pointing receiver.

from an order of the Courts in India regarding the appointment of receiver, and that it would not be proper to grant a certificate of fitness of appeal in such matter.<sup>36</sup>

Thus it has been held that there is no appeal to the Privy Council against an order refusing the appointment of a receiver in a suit. Such order does not finally decide any matter which is directly at issue in the cause in respect of the rights of the parties, and is not final within the meaning of S. 109 of the Code of Civil Procedure, 1908, or S. 39 of the Letters Patent; nor is the matter a special case falling within the terms of clause (c) of S. 59 of the former Code of Civil Procedure or S. 40 of the Letters Patent.<sup>37</sup>

Power of  
Appellate Court  
with regard to  
appointment of  
receivers.

It is competent to an Appellate Court to appoint a receiver.<sup>38</sup>

(35) *Tega Singh v. Bichitru Singh*, 10 C.L.J. 326=7 Ind. Cas. 452. The changes introduced in the Code of 1908 do not in this matter affect the law as it stood under the Code of 1882. (*Mohesh Chandra v. Satrugan*, 27 C. 1, applied).

(36) *Mahomed Musaji Saleji v. Ahmed Musaji Saleji*, 13 C.L.J. 507.

(37) *Ibid.*

A 'final order' within the meaning of cl. (a) of S. 109 of the Civ. Pro. Code, 1908, means an order which finally decides any matters directly at issue in the case in respect of the rights of the parties. An order appointing a receiver is not an order of this description. Section 109, cl. (c) of the Civ. Pro. Code, 1908, covers special cases, such, for example, as those in which the point is dispute in not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely in the discretion of the Court, is a judicial process which cannot be performed without special exercise of that discretion, evinced by a fitting certificate. Where the question in controversy was whether a receiver should or should not be appointed in respect of the subject matter of the litigation, and the Courts took divergent views upon the matter, certificate as to the fitness of the case for appeal to His Majesty in Council was refused. *Mahomed Musaji Saleji v. Ahmed Musaji Saleji*, 13 C.L.J. 507. (13 C.L.J. 90, Referred to).

(38) *Jaikisondas Gangadas v. Zenabai and Kazi Mahomed Miya Dada Miya*, 14 B. 431; *C. E. Grey v. Woogramohun Thakur*, 28 C. 790; *Ramasami Naik v. Ramasami Chetti*, 30 M. L. T. 255=2 M. L. T. 167=17 M. L. J. 207; *Janaki Ammal v. Narayanaswami Iyer*, 4 M. L. T. 268; *M. K. Subramania Iyer v. Muthulakshmiammal*, (1912) M.W.N. 1208. In the present case, (14 B. 431 noted *supra*) there were exceptional circumstances rendering

When a receiver of a property has been appointed by an Appellate Court pending an appeal to that Court, even when the appeal is no longer pending, he must be regarded as the receiver of the property, of which he has been put in possession, until he is finally discharged, and the Appellate Court has jurisdiction to deal with matters relating to the receiver, including proceedings for contempt, until he has had his accounts passed by it.<sup>39</sup>

Where a receiver has been appointed by the lower Court, and the facts proved only warrant the issue of a temporary injunction, and not the appointment of a receiver, the Appellate Court would set aside the order appointing the receiver, and in lieu thereof, issue an injunction.<sup>40</sup>

Where a receiver had been validly appointed on the ground that property was the subject-matter of the suit, and it afterwards turned out on appeal that the decree only operated against the defendants personally, the Appellate Court had jurisdiction to maintain the receiver as a method of realising the decree amount from the judgment-debtor personally.<sup>41</sup>

**Appointment of receiver on one ground—Continuation of appointment by Appellate Court on different ground.**

**Review of order by Appellate Court.**

Just as in the case of the original Court, an Appellate Court has power to review its own order.<sup>42</sup>

As to the power of a Court to review its own order the Code of Civil Procedure provides that "any person considering himself aggrieved—(a) by a decree or order from which an appeal is allowed by this

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the appointment of a receiver "just and convenient" The Court of appeal which had granted a receiver until the appeal filed by the plaintiff against so much of the decree as refused to appoint a receiver came on for hearing, varied the decree itself after hearing the appeal by appointing a receiver of the rents and profits of the mortgaged property as from the date of the filing of the suit. 14 B. 431. In *M. K. Subramania Iyer v. Muthulakshmi-ammal*, (1912) M.W.N. 1208, it is said that in the matter of appointment of receivers the appellate Court has all the powers of the original Court. As to the practice of the appellate Court interfering with an order of the lower Court regarding the appointment of a receiver, see chapter on "Practice and Procedure."

(39) *E. C. Grey v. Woogramohun*, 28 C. 790 The following remarks in the course of the judgment may also be noted :—

"He also raised another what may be properly called a technical objection, viz., that this Court had no jurisdiction in the matter, and as the appeal was over and the case had been sent down to the Court below, the appointment of the receiver, who had been put in charge of the property, had come to an end. As regards this point, we are of opinion, that until the receiver is finally discharged, he must be regarded as the receiver of the property, of which he has been put in possession by the direction of this Court, and that this Court has ample jurisdiction, until he has had his accounts passed, to deal with the matter." *C. E. Grey v. Woogramohun Thakur*, 28 C. 790 (793).

(40) *Chandidat Jha v. Paamanand*, 22 C. 459.

(41) *Ramasami Naik v. Ramasami Chetti*, 30 M. 255 = 17 M L J. 201 = 2 M L T. 167.

(42) See S. 114, Civ. Pro. Code, 1908; *Chuni Lal v. Soni Bai*, 21 B. 328.



Code, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."<sup>43</sup>

So, also, the High Court may in a proper case interfere in the exercise of its revisional powers and appoint a receiver, or set aside the order of the lower Court appointing a receiver. As to the exercise of these revisional powers the Code of Civil Procedure provides that the "High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—(a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."<sup>44</sup>

Where a receiver is appointed by the High Court, pending an appeal, no other Court has power to make an order or give any directions as supplementary to those given by the High Court, or without authority given by that Court.<sup>45</sup>

The reason of this rule is obvious. As a general rule a pending appeal, without annulling the judgment appealed against, leaves it subsisting as a valid adjudication governing the rights of the parties, but the further litigation and all matters connected with it are transferred to and placed under the control of the Appellate Court. The power of the inferior Court in any way to deal with the litigation is completely in abeyance, except to carry out the decree, which it is the duty of the Court to do, as section 545 of the Code of Civil Procedure (1882) <sup>46</sup>, provides that the execution of the decree is not stayed by the mere fact that an appeal has been preferred against it.<sup>47</sup>

(43) See Civ. Pro. Code, 1908, S. 114.

(44) See Civ. Pro. Code, 1908, S. 115.

(45) *Jenaki Ammal v. Narayanaswami Iyer*, 4 M.L.T. 268.

(46) Now O. XLI, r. 5, of the Code of Civil Procedure, 1908.

(47) *Ramanadhan Chetty v. Narayanan Chetty*, 27 M. 602. His Lordship Sir S. Subramania Aiyar after referring to the various theories that have been propounded on this subject says :—"The more generally received theory and the one which has hitherto been acted on in this country, is that a pending appeal, without annulling the judgment appealed against, leaves it subsisting as a valid adjudication governing the rights of the parties, but that the further litigation and all matters connected therewith are transferred to and placed under the control of the Appellate Court. In this view it follows that, when an appeal has

Power of Court  
to appoint receiver  
after decree.

The Court has power to appoint a receiver of property which is the subject of a suit even after decree.<sup>48</sup>

been duly filed, the lower Court has, pending the decision of the appeal, no jurisdiction over the cause and can, as a rule, pass no order therein. In other words, the action of the inferior Court is, of necessity, suspended by the appeal until the Appellate Court has disposed of it, for, as observed in *Helm v. Boone*, 22 Am. Dec., 75; 6 J.J. Marshall, 351, 'there could not be a greater absurdity in judicial proceeding than that a cause should be progressing at the same time in the inferior and appellate tribunals of the country.' Sections 545 and 546 of the Civil Procedure Code (1882) clearly imply that an appeal incapacitates the inferior Court from dealing with the litigation, since even the power of staying execution is, once an appeal is made, taken away from the Court and is exercisable by the Appellate Court only. Section 623 of the Code, relating to review, even more plainly points to this view instead of, as contended for the respondent, to the contrary. Not only is an application for review by a party who has already appealed disallowed by that section, but even in the case of a party not appealing no review lies when there is an appeal by some other party on a common ground, or where the former as a respondent is in a position to bring before the Appellate Court the matter to be reviewed. The manifest intention of the provision is to avoid a conflict of jurisdiction and to prevent any action on the part of the inferior Court which would have the effect of controlling the powers of the higher Court with reference to the matter actually under appeal. Though a party who has applied for a review is, for obvious reasons, not precluded from appealing, the Code does not provide for the procedure to be followed when an appeal is preferred after the review. Of course both proceedings could not go on simultaneously. If the review proceeding is to be continued and the appeal stayed, expediency would require that the party affected by the final order in the review should be enabled to obtain a remedy in the pending appeal notwithstanding that such remedy would be in respect of what was not in existence on the date of the appeal. Anomalous as such a course would be with reference to what was said by Brett, L.J., in *Ex parte Banco de Portugal*, L.R. 14 Ch. D. 1 at pp. 4, 5, already cited, it may be open to the Legislature to introduce it into our procedure by a provision like that proposed in clauses 3 and 4 of S. 623 in the Civil Procedure Code Bill now before the Viceroy in Council and referred to in the argument before us on behalf of the respondent. But in the absence of such an express enactment it must on principle be held that after the due filing of the appeal and during its pendency, the power of the inferior Court in any way to deal with the litigation is completely in abeyance, except to carry out the decree which, of course, it is the duty of the Court to do, as S. 545 of the Civil Procedure Code in terms provides that the execution of the decree is not stayed by the mere fact that an appeal has been preferred against it." Per Sir S. Subramania Aiyar, J., in *Ramanadhan Chetty v. Narayanan Chetty*, 27 M. 602, at pp. 604, 605, 606.

(48) *Shanmugam v. Moidin*, 8 M. 229. "In a suit brought in 1880 by the widow of a deceased partner to wind up the partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of debts which might become barred by limitation. After decree, on the application of the plaintiff, a receiver was appointed to collect outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed (1) on the ground that the appointment of a receiver after decree was *ultra vires*; (2) because the debt was barred by limitation: Held (1) that the appointment of the receiver was valid; (2) that under S. 15 of the Limitation Act the suit was not barred." *Shanmugam v. Moidin*, 8 M. 229. In this case at p. 233 his Lordship Turner, C.J., said "There is nothing in the Civil Procedure Code which limits the power of the Court to appoint a receiver after the decree where this course is necessary or proper."

The question whether a Court has power to appoint a receiver of property situated out of the limits of its territorial jurisdiction has come before the Court in some of the older cases, and some rather conflicting dicta have been pronounced upon it,<sup>49</sup> though the balance of authority seems to be in favour of the view that the Court has such power.

**Power of Court to appoint receiver of property or against persons situate out of the limits of its jurisdiction.**

A case involving a question of an analogous nature came before the Supreme Court of Bengal in the year 1851.<sup>50</sup> In that case one of several co-sharers entitled to a share of real estate applied for a receiver of the entire joint property, and some of the other co-sharers who resisted the application were not subject to the jurisdiction of the Court. *Held* that, in such a case, a receiver should be appointed limited to the share of the applicant and against those only who were subject to the Court's jurisdiction.<sup>51</sup>

The Court said in the course of the judgment "some of the parties opposing the appointment were not subject to the jurisdiction, and the Courts would always be careful for that reason, to limit the appointment to the portion of the estate in the possession of those subject to the jurisdiction, and before the Court."<sup>52</sup>

The question next came for decision in a different form before the High Court of Calcutta in 1863. In that case it was held that the High Court cannot exercise jurisdiction in respect to land which is situate out of its local limits, even though it be in possession of the receiver.<sup>53</sup>

In the course of the judgment in that case, the Court said "It may seem anomalous that the Court cannot exercise jurisdiction in respect to land which, though situate out of its local limits, is in the possession of the receiver, and therefore in its possession; but it is in its possession only for the purposes of a suit as to which it has Special Jurisdiction; and the fact of such possession would not justify the Court in exercising a larger jurisdiction than that given to it by the words of the Charter."<sup>54</sup>

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(49) The Courts in England have the undoubted power to appoint receiver of property outside the jurisdiction of the Court or of property situated even outside His Majesty's dominions. See Chapter on "Over what property appointed."

(50) *Buddinath Paul v. Bycauntnath Paul*, 2 Taylor & Bell. 192 = Indian Decisions, Old Series, Vol. III? p. 693.

(51) *Ibid.*

(52) *Ibid* at p. 193 = Indian Decisions, Old series Vol. III, at p. 694.

(53) *Denonath Sreemony v. C. S. Hogg*, 1 Hyde 141.

(54) Per Wells, J., in *Denonath Sreemony v. C. S. Hogg*, 1 Hyde 141 (142).

For a third time this point came for determination in the year 1874 before the same Court presided over by Couch, C. J. In that case his Lordship doubted whether he had jurisdiction to appoint a receiver of property situate out of the Court's jurisdiction. His Lordship said:—"The Court is asked in the suit to appoint a receiver. Without deciding whether this Court might or might not appoint a receiver of the property in Bombay, it would certainly be a most inconvenient course to adopt. And I am not prepared to say that this Court could appoint a receiver for the property which is within the jurisdiction of the Bombay Court." Beyond a mere expression of opinion the whole question is left undecided by this case.<sup>55</sup>

In the next year (1875), the same Court was once again called upon to decide the same question. In that case the Court definitely stated that "It has been the practice of the Court, were it necessary to do so in order to enforce its own decree to appoint a receiver in respect of landed property situate in the mofussil, and we feel ourselves justified in following that practice."<sup>56</sup>

A somewhat analogous question came before the Privy Council on appeal from the High Court of Bombay in the year 1898,<sup>57</sup> in which it was held that the High Court had jurisdiction over assets recovered by the receiver outside the limits of the Court's jurisdiction. In that case, within a month from the date of a partnership agreement between H, G and B, the moneyed partner H, died, and the partnership was dissolved; but the affairs of the partnership were not wound up and the capital of H continued to be employed in the business. The application for Letters of Administration made on behalf of the minor heir of H was opposed by the partner B, and the Court directed the Administrator-General to take out administration. In the meantime, G and B, as surviving partners, took proceedings in Bombay to recover certain debts due to the business; and the moneys recovered in those suits passed into the hands of the receiver appointed by the Court in those suits; and the Administrator-General who obtained Letters of

(55) Per Couch, C.J. in *Hadjee Ismail Hadjee Hubeeb v. Hadjee Mahomed Hadjee Joosub*, 21 W. R. 303 (306)=13 B.L.R. 91.

(56) *Juggodumba Dossee v. Puddomoney Dossee*, 15 B.L.R. 318 at pp. 324, 325, 330; See also *Jairam v. Atmaram*, 4 B. 482 at pp. 484, 485, 488. Reference may be made to *Poreshnath Mookerjee v. Radha Nath Mookerjee*, Calcutta High Court Suit No. 567 of 1874 and *Kamal Kumari Debi v. Poresh Nath Mookerjee*, Calcutta High Court Suit No. 307 of 1875 cited in Woodroffe's Law of Receivers, 2nd Ed., pp. 23, 24, where the Calcutta High Court appointed receivers of property outside the jurisdiction of that Court. See this point dealt with in full in chapter on "Over what property appointed."

(57) *Bhugwandas Mitharam v. Rivet Carnac*, 3 C.W.N. 186=23 B. 549, P.C.



Administration brought a suit in the Bombay High Court against B, G, and the receiver for recovering the money in the hands of the receiver and for partnership accounts. It was held that the High Court had jurisdiction over the assets although they were recovered outside Bombay, *i.e.* outside the jurisdiction of the Bombay High Court.<sup>58</sup>

A Court has power to order a receiver to pay debts due from the estate, though such an order should be made in special cases only. Such an order when made is final, subject only to review or appeal.<sup>59</sup>

**Power of Court to order receiver to pay debts.**

In a case that came up before the Bombay High Court the plaintiff was admittedly entitled to a half share of an estate, which this suit was brought to divide. A decree had been made referring it to the Commissioner to ascertain and divide the said estate, and a receiver had been appointed. No power had been specially reserved by the decree to the receiver to pay pressing or other debts due by the estate, or the part owners thereof. Some time would elapse before the accounts could be taken in the Commissioner's office, and meanwhile two creditors were threatening attachment of the property of the estate, and their debts were running at considerable interest. The estate was not otherwise indebted. There was money in the receiver's hands to the credit of the estate, half of which would be more than sufficient to pay off the claims of these creditors. The plaintiff applied to the Court for an order to the receiver to pay these two debts out of the plaintiff's half share of the moneys in his hands, leaving the plaintiff to prove his right to debit the estate with such payments. It was *held*, that the Court had jurisdiction to make the order asked for, though such an order would only be made in special cases and on special conditions, and that the present was a case in which the order asked for might properly be made.<sup>60</sup>

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(58) *Bhugwandas Mitharam v. Rivet Carnac*, 3 C.W.N. 186=23 B. 549, P.C. Referred to in 9 C.W.N. 537

(59) *Motivahu v. Premvahu*, 16 B. 511.

(60) *Ibid*. The following observations of Farran, J., may also be noted:—"I have, I think, undoubted jurisdiction to make an order for payment of these sums out of the plaintiff's share. From early times it was the practice of the Court of Chancery in England to make such orders, but the Court seems to have exercised the power very sparingly, and only in very special cases, and under special conditions. The authorities are collected in Daniell's Chancery Practice (6th Ed.), p. 988, note (a). The Statute 15 and 16 Vic., c. 86, S. 57, widened and extended this power of the Court by enacting that whenever any real or personal property forms the subject of any proceedings in Chancery, and the Judge is satisfied that the same is more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at any time after the commencement of such proceedings, allow to the parties interested therein, or to any one or more of them, the whole or part of the annual income of the real estate, or part of such *personal* property, or a part, or the whole, of the income thereof. A corresponding Act was passed for the



Under certain circumstances, it is competent to a Court which has appointed a receiver to authorise him to raise a loan which is to have priority over all existing liens, and that such an order cannot be treated as a nullity, so long as it is not set aside in an appropriate proceeding.<sup>61</sup>

**Power of Court to empower receiver to raise loan on the estate.**

Although there is no specific provision made in the Civil Procedure Code for the discharge or removal of a receiver and no provision to allow appeals in respect of orders of discharge and removal of receivers, yet it has been held that the power to discharge and remove or to give directions to a receiver has been taken to be inherent in the Court which appointed the receiver and that in that respect the Appellate Court has got all the powers of the Original Court.

**Power of Court to cancel order appointing receiver.**

A Court which has passed an order appointing a receiver in any case has power subsequently to hold an inquiry as to whether the order should remain in force or not, and if necessary to cancel the order.<sup>63</sup>

Supreme Courts in India—Act VI of 1854, S. 35 of which gave these Courts similar powers. That Act has been repealed by Act VIII of 1868, but the repeal (S. 1) does not affect any practice or procedure directed by it. My jurisdiction, therefore, to make the order is clear. The order is not, as a rule, made, unless there is some pressing reason for it, and the Court can see that the parties are clearly entitled. In this case the title of the plaintiff to half the property is established by the decree. The property is considerable. It consists of a house in Bazar Gate Street, which was purchased for Rs. 35,000 and there are about Rs. 10,000 in the hands of the receiver. It is not suggested that there are any charges on this property, or debts due in respect of it, save the debts which are the subject of this motion. Assur Lalji has obtained a decree against the plaintiff for about Rs. 3,000 and costs, which he threatens to enforce by attachment. There is strong reason for believing that the debt is payable out of the joint property. There is also a small claim for about Rs. 440, due to Mowji Issur, which is in nearly the same position, though no decree has been obtained in respect of it. These claims bear interest, while the plaintiff's moneys in the hands of the receiver bear none. The decree in this suit was, as I have said, made in February, 1891, but the directions contained in it have not been proceeded with, because the defendants are quarrelling as to who is to take out probate to the will of Pragji, and, till that is done, the suit is at a stand-still. It is difficult to conceive a greater case of hardship on the plaintiff. The order asked for by her should, therefore, if possible, be made." Per Farran, J., in *Motivahii v. Premvahu*, 16 B. 511 at pp. 513, 514.

(61) *Giridhari Lal Roy v. Paresh Nath Mukherji*, 4 C.L.J. 495 followed in *Gora Chand Lurki v. Makhan Lal Chakravarti*, 6 C.L.J. 404 (406) = 11 C.W.N. 489.

(62) *M. K. Subramania Iyer v. Muthulakshmiammal*, (1912) M.W.N. 1208.

(63) *Ranganayagi Ammal v. Mahali Pillay*, 4 L.B.R. 356. The following extracts from the judgment in the above case and the following citations referred to in the same judgment may also be noted :—At page 269 of Woodroffe's Law relating to Receivers, it is written :— "The power to terminate flows naturally and as a necessary sequence from the power to create. The power of the Court to remove or discharge a receiver whom it has appointed

The jurisdiction of the Court to appoint a receiver is not taken away, merely because the ground alleged for the appointment amounts to a criminal offence committed in respect of the property for the protection of which the receivership is sought. Thus it has been held that the fact that the acts complained of amount to misappropriation rather than waste makes no difference for the

Power of Court to appoint receiver of property with regard to which a criminal offence has been committed.

purposes of appointing a receiver.<sup>64</sup>

Jurisdiction of Criminal Court to interfere with possession of receiver.

sanction of the Court,—his possession being the possession of the Court.<sup>65</sup>

Power of Civil Court to appoint a receiver of property with regard to which an order for maintenance of possession has been made by a Criminal Court.

A receiver appointed by the High Court cannot be made a party to a proceeding under S. 145 of the Code of Criminal Procedure merely in his capacity of receiver, and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate, without the

The fact that there exists in respect of any immoveable property an order of a Magistrate passed under S. 145 of the Code of Criminal Procedure is no bar to the exercise by a Civil Court of the power of appointing a receiver in respect of the same property.<sup>66</sup>

may be exercised at any stage of the litigation. It is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implying the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other cause shown. And again at page 283—'A Court of Equity, as of course, is always ready to rectify improper or irregular proceedings, and where an application for a receiver has been allowed and it subsequently appears that the appointment was improper, the receiver will be discharged. . . . Inasmuch as the receiver is appointed upon the theory that thereby the interests of all the parties concerned will be the better subserved, protected and secured, it follows, as of course, that whenever at any stage of the litigation subsequent to the appointment these interests will be promoted by the discharge of the receiver, it is the proper practice to move therefor.' I see no reason to dissent from these views, and that being so, in the exercise of the power inherent in the Court it seems to me that at any time it can hold such enquiry as it may deem fit, as to whether it may be still fit and proper for the order for the appointment of a receiver to remain in force, or whether it should be cancelled. I accordingly hold that in the present case it is in the power of the Judge, and indeed proper for him so to do, as the receiver was appointed *ex parte*, to hold an enquiry as to whether the order appointing a receiver should remain in force or not." Per Trurin, C.S.I. in *Ranganayagi Ammal v. Mahali Pillai*, 4 L.B.R. 356 (358).

(64) *Hanumayya v. Venkatasubbayya*, 18 M. 23.

(65) *A. M. Dunne & Kumar Chandra Kisore*, 30 C. 593=7 C.W.N. 390 (*Ex parte Cochrane*, (1875) L.R. 20 Eq. 282, *William Russell v. The East Anglian Railway Company*, (1850) 3 Mac. & G. 104, and *Ames v. The Trustees of the Birkenhead Docks*, (1855) 20 Beav. 332, Referred to).

(66) *Barkat-un-nissa v. Abdul Aziz*, 22 A. 214=20 A.W.N. 22. The following observations of Knox and Blair, JJ., may also be noted:—"The powers of a Civil Court

**Power of Civil Court to appoint receiver in supersession of receiver previously appointed by a Criminal Court under S. 146 of the Code of Criminal Procedure.**

But where a receiver is appointed by a Magistrate in respect of an immoveable property under Cl. (2), S. 146, Cr. P.C., the Civil Court has no power to appoint a receiver in supersession of the receiver appointed by the Magistrate and such an interlocutory order of the Civil Court cannot have the effect of discharging the Magistrate's attachment or enable the Court to remove the receiver appointed by the Magistrate.<sup>67</sup>

trying an action for ejectment are not in any degree controlled by reason of a Magistrate making an order maintaining possession on behalf of one of the litigants under S. 145 of the Code of Criminal Procedure. The reference here made is to an order passed by a Magistrate in 1896, whereby the Magistrate, acting under the provisions of S. 145 of the Code of Criminal Procedure, decided that Maulvi Abdul Aziz was in possession and issued an order declaring him to be entitled to possession until 'evicted therefrom in due course of law.' The Code of Civil Procedure and the powers of Civil Courts under that Code are in no way fettered by any order that may be passed by a Magistrate under S. 145 of the Code of Criminal Procedure. The Magistrate's order under S. 145 is only intended to control any period up to the time when the Civil Court takes seisin of the matter and passes such orders as may be necessary for the protection of the property. In the present case we consider it absolutely necessary for the preservation and better custody and management of the property that neither of the contending parties should be in possession of it until the dispute between them has been fully determined, and that the property should remain in the custody of a person independent of both parties,—a person moreover whose position will be that of an officer of the Court appointed by and answerable to the Court for all acts done by him during the period of his receivership. We accordingly allow the appeal, set aside the order of the learned Subordinate Judge, and send this case back to him to be dealt with in the light of our instructions and in accordance with the provisions of S. 505 of the Code of Civil Procedure." Per Knox & Blair, JJ., in *Ibid*.

(67) *Bidya Prosad Narain Singh v. Asrafi Singh*, 17 C.W.N. 1070=20 Ind. Cas. 269=40 C. 862. The following observations in the course of the judgment may also be noted :—"When there is a dispute as to immoveable property, likely to cause a breach of the peace, and the Magistrate, having made an order in the terms of S. 145 of the latter Code, is unable to decide which of the parties was in actual possession at the date of such order, he is empowered by Cl. (1) of S. 146 to attach the subject of dispute 'until a competent Court has determined the rights of the parties thereto or the person entitled to possession thereof.' Cl. (2) of the section provides that 'when the Magistrate attaches the subject of dispute he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.' The possession of a receiver so appointed is the possession of the Magistrate who appoints him, and the Magistrate has possession or custody under a statutory power or title good against the parties to the dispute until a judicial determination is arrived at by the proper Court in regard to 'the rights of the parties' or 'the persons entitled to possession.' An interlocutory order of a Civil Court appointing a receiver does not amount to such a determination and cannot therefore have the effect of discharging the Magistrate's attachment or enable the Court to remove the Receiver appointed by the Magistrate. The order made by the learned Subordinate Judge in this case assumed, contrary to the fact, that one of the parties to the suit had at the time the right to terminate the Magistrate's attachment or, which is the same thing, to remove the Magistrate's receiver. The learned Subordinate Judge says that in virtue of the suit instituted before him he has seisin of the land. So he has *quoad* the parties to the suit. But he has overlooked Cl. (2) of r. 1 of O. XL which says that nothing in that Rule shall 'authorise the Court to remove from the possession or

When however the matter comes before the Civil Court and that Court acting on its own motion or at the instance of one or other of the parties thinks that a receiver should be appointed, it should make an order appointing a receiver conditionally on the Magistrate withdrawing his attachment and it would be a wise and proper exercise of discretion on the Magistrate's part to withdraw his attachment on being informed of the order of the Civil Court.<sup>68</sup>

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custody of property any person whom any party to the suit has not a present right so to remove.' None of the parties to the suit has a present right to interfere with the Magistrate's possession. The whole object of the attachment is to vest the possession or management of the property in the Magistrate, safe from any interference of the parties. The mere institution of the suit clothes the Civil Court with no right or power not then possessed by one or other of the parties before it. It does not give the Court a right to possession *contra mundum*." Per Sharfuddin & Richardson, JJ., in *Bidya Prosad Narain Singh v. Asrafi Singh*, 17 C.W.N. 1070 (1071)=20 Ind. Cas. 269=40 C. 862. But see also Note 66, *supra*.

(68) *Ibid.* The following extract from the judgment in the above case may be referred to as clearly explaining the law on the subject :—

"There is no question of the relative superiority or inferiority of one Court in relation to another. It is sufficient to say that the two Courts, the Court of the Magistrate which first dealt with the dispute between the parties under the Criminal Procedure Code and the Court of the Subordinate Judge before whom the dispute is subsequently brought, are independent Courts, and apart from some special provision or power a prior legal possession or custody obtained by the one must be respected by the other. The two cases referred to by the Subordinate Judge do not support his view. The case of *Barkut-un-nissa v. Abdul Aziz*, 22 A. 214 turns not upon the language of S. 146 of the Criminal Procedure Code but upon the different language used in S. 145, where a power is given to the Magistrate, in the event of his finding possession to be with one of the parties, to declare that party entitled to retain possession until he is 'evicted in due course of law.' In *Lokenath v. Nedu*, 29 C. 382, the High Court refused to interfere with the management by the Magistrate of property attached under S. 146, on the ground that the intervention of the Magistrate was only temporary and a remedy could be obtained in the Civil Court. The point before us was not before the Court and we do not lay too much stress on observations in the judgment not directed to that point. It is clear, however, that the remedy which the Judges contemplated was a remedy by way of final decision of the respective rights of the parties. 'It is beyond doubt,' they say, 'that recourse must be had to the Civil Court for a final settlement of the matter in dispute, pending which the Magistrate by an attachment holds the land.'

"Though the Magistrate, however, has an abstract right to retain possession, it is also within his discretion to withdraw his attachment. We do not suppose that any Magistrate would desire to retain possession of property attached under S. 146, or to be responsible for the management of such property longer than is necessary in the interest of peace and order which is his sole interest in the matter. It appears to us that when the dispute comes before the Civil Court and that Court, acting of its own motion or at the instance of one or other of the parties before it, thinks that a receiver should be appointed, it should make a conditional order. The receiver may be appointed conditionally on the Magistrate withdrawing his attachment. On the Magistrate being approached after this order is made, we are of opinion, speaking generally and without intending to lay down a rule applicable to all circumstances, that it would be a wise and proper exercise of discretion on the Magistrate's part to withdraw his attachment. The effect of the withdrawal of the attachment would be to remove the receiver, if any, appointed by the Magistrate and so leave the field open for the receiver appointed by the Civil Court. Unless, however, the concurrence of the Magistrate is obtained in this or some other way, the receiver appointed by the Magistrate cannot be



In the absence of good reason to the contrary the Civil Court should continue the receiver appointed by the Magistrate.<sup>69</sup>

**Jurisdiction to  
appoint receiver  
of property in  
hands of common  
manager.**

A receiver may very well be appointed in respect of property in the hands of a common manager appointed under S. 95 of the Bengal Tenancy Act.<sup>70</sup>

removed before the time fixed by S. 146." Per Sharfuddin and Richardson, JJ., in *Bidya Prosad Narain Singh v. Asrafi Singh*, 17 C.W.N. 1070 at pp. 1071, 1072=20 Ind. Cas. 269=40 C. 862.

(69) *Ibid.* The following observations of the Lordships in the course of the judgment may also be noted :—

"As to the selection of a receiver in the event of a Civil Court deciding to take such a course as that which we have suggested, here also the exercise of a discretion is involved. The Civil Court has a discretion to continue the receiver appointed by the Magistrate or to appoint some one else as receiver, and, in the absence of good reason to the contrary, it appears to us wiser and more prudent that the receiver appointed by the Magistrate should be continued. A change of management is in itself undesirable and if a Magistrate's receiver is liable to be removed when a suit is instituted it may be difficult for the Magistrate to find a proper person for the post. In the case before us it appears that the land attached by the Magistrate forms a great part—though not the whole—of the land which is the subject-matter of the suit before the Subordinate Judge. It is not suggested that Mr. Stevens—the receiver appointed by the Magistrate—had been guilty of mismanagement or was in any way unfit for the post. On the contrary, when the plaintiffs applied to the Subordinate Judge to appoint a receiver they suggested that the appointment should be given to Mr. Stevens. So far as the materials for forming a conclusion are before us, it appears to us that the Subordinate Judge, assuming that he was in a position to appoint a receiver, would have made a wiser choice if he had selected Mr. Stevens. If he had done so, there would probably have been no difficulty." Per Sharfuddin and Richardson, JJ. in *Bidya Prosad Narain Singh v. Asrafi Singh*, 17 C.W.N. 1070 (1072)=20 Ind. Cas. 269=40 C. 862.

(70) *Madaneswar Singh v. Mahamaya Prosad Singh*, 15 C.W.N. 672=13 C.L.J. 487. The following remarks of Mookerjee, J. in the course of the judgment may be cited as containing a clear exposition of the law on the subject :—

"In so far as the second contention of the appellants is concerned it has been argued that it is not competent to the Subordinate Judge to appoint a receiver in respect of properties which are already in the possession of the common manager appointed by the District Judge under S. 95 of the Bengal Tenancy Act. It has been suggested that if such an appointment were allowed there might be a conflict of authority between the receiver and the common manager, and that in any event it would not be competent to the receiver to remove from possession the common manager inasmuch as under O. XL, r. 1, sub-r. (2) the defendants have not a present right to remove him. It has further been argued that as the properties are in charge of the common manager, they are in one sense in the custody of the law and that consequently the appointment of a receiver is needless. We are not prepared to accept as well founded the broad contention that the provisions of O. XL, r. 1 of the Code are controlled by those of S. 95 of the Bengal Tenancy Act. In our opinion, there may arise cases where a receiver may have to be appointed in respect of the properties for which a common manager has previously been appointed. The object and scope of the two appointments are entirely distinct. A common manager is appointed by the District Judge where, by reason of disputes between the co-owners of an estate or tenure as to the management thereof, inconvenience to the public or injury to private rights is likely to ensue. A receiver, on the other hand, is appointed by a Court for the protection of the rights of the parties to the litigation. The appointment of a common manager may save the property from mismanagement, but good management may not always be sufficient for the protection of parties who are litigating in



Jurisdiction to appoint receiver of property in respect of which an application for common manager is pending.

The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a receiver in a proper case.<sup>71</sup>

In a partition suit between co-owners, a consent decree was made.

Jurisdiction to appoint receiver in mortgage suit where a receiver has been appointed with regard to same property in previous suit for partition.

To give effect to that decree, a receiver was appointed. Certain properties, which included not merely the properties under the charge of the receiver, but also two other properties, were mortgaged. After an *ex parte* decree was obtained by the mortgagee, an application was made for the appointment of a receiver in the mortgage suit. *Held*, that a receiver might

respect of that property. Assuming that a property in the possession of the defendant in a suit to enforce a security is well-managed, yet for the protection of the rights of the plaintiff mortgagor, the appointment of a receiver may be essential. If therefore a receiver is appointed in respect of property which is already in the possession of a common manager, the possession of the common manager need not necessarily be disturbed. The common manager, under the direction of the District Judge, may have to apply a certain portion of the income for the benefit of one or more of the co-sharers. If the interest of such co-sharers in the joint estate is the subject-matter of the litigation in which the receiver is appointed, the effect of the appointment of the receiver is to entitle him to obtain from the common manager whatever is payable to the co-sharers in question. Such sum when paid to the receiver would be paid by him into Court to the credit of the suit in which he has been appointed. Consequently it is conceivable that a receiver may very well be appointed in respect of property which is already in the hands of a common manager and such appointment may be essential for the protection of persons who could not otherwise obtain any control, for the protection of their own rights, over the assets in the hands of the common manager. We are unable to appreciate how there must be a conflict of interest or authority between the receiver so appointed and the common manager. In the case before us, however, even the possibility of any conflict has been avoided by the obviously reasonable course adopted by the Subordinate Judge. The common manager has been appointed receiver; as common manager he manages the property under the direction of the District Judge, but the funds in his hands which belong to the judgment-debtor in the mortgage suit must be applied by him as receiver under the direction of the Subordinate Judge. The second ground taken on behalf of the appellants consequently fails." Per Mookerjee and Teunon, JJ., in *Madanewar Singh v. Mahamaya Prosad Singh*, 15 C.W.N. 672 at pp. 675, 676 = 13 C.L.J. 487.

(71) *Jibanessa Khatun v. Majidunnessa Khatun*, 17 C.W.N. 581 = 18 Ind. Cas. 398. In the course of the judgment their lordships Carnduff and Beachcroft, JJ. say:—

"Order XL. of the Procedure Code is not controlled by the provisions of the Tenancy Act as to the appointment of a Common Manager, and it is open to a Civil Court to appoint a receiver in respect of property already in the hands of a Common Manager. If, then, the appointment of a Common Manager had been actually made by the District Judge in this instance, there would be nothing to prevent the appointment of a receiver by the Subordinate Judge, and *a fortiori* there can be no objection in law to the appointment of a receiver where the appointment of a Common Manager is, as here, not an accomplished fact, but a bare contingency. The legal objection therefore fails." Per Carnduff and Beachcroft, JJ., in *Jibanessa Khatun v. Majidunnessa Khatun*, 17 C.W.N. 581 (582) = 18 Ind. Cas. 398.

be appointed in the mortgage suit, although a receiver was appointed in the partition suit. The same person who was appointed receiver in the partition suit might be appointed receiver in the mortgage suit or different persons might be appointed. If different persons were appointed as receivers, the collection might be made by one of the receivers only (for instance, by the receiver in the partition suit), but the sums collected by him and payable to the mortgagor should be placed in the hands of the receiver in the mortgage suit to be applied for the benefit of the mortgagee under the direction of the Judge.<sup>72</sup>

**Jurisdiction to  
appoint receiver  
in partition suit  
—Can receiver  
be appointed  
over whole pro-  
perty or only  
plaintiff's share.**

In a suit for partition, the Court has power to appoint a receiver over the whole property which is the subject of litigation.<sup>73</sup>

Even under the Code of 1882 it was held that, in a suit for partition of a joint estate, the words "property the subject of a suit" in S. 503 of that Code meant the whole joint estate.<sup>74</sup>

In such a case "the owner" in S. 503 (d) was held to mean the whole body of owners to whom the joint estate belonged.<sup>75</sup>

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(72) *Khubsurat Koer v. Saroda Charan Guha*, 14 C.L.J. 526=12 Ind. Cas. 165=16 C.W.N. 126. The following observations of Mookerjee, J., may also be noted:—"We are of opinion that a receiver may very well be appointed in the mortgage suit, although a receiver has been appointed in the partition suit. The receiver in the partition suit acts under the direction of the Court in which that suit is pending, and the sums collected by him are bound to be applied for the benefit of the parties to that litigation under the direction of the Judge. In other words, the receiver is bound to pay the money either into the hands of the proprietors or to their creditors and other persons entitled to the proceeds of the properties. On the other hand, if a receiver is appointed in the mortgage suit, he is bound to apply the proceeds for the benefit of the mortgagee. It has been suggested, however, that if different persons are appointed as receivers in the partition suit and the mortgage suit, there may possibly be a conflict between them, because undoubtedly the two receivers could not simultaneously collect the profits of the same properties (*Searle v. Choat*, (1884) 25 Ch. D. 723. *Beach on Receivers*, S. 232). We are of opinion that there is no substance in this contention. The difficulty may be avoided, either by the appointment of the same person as receiver in the two suits, or, if different persons are appointed as receivers, the collection may be made by one of the receivers only, (for instance, by the receiver in the partition suit), but the sums collected by him and payable to the mortgagor placed in the hands of the receiver in the mortgage suit to be applied for the benefit of the mortgagee under the direction of the Judge. (Cf. *Madaneswar Singh v. Mahamaya Prosad Singh*, 13 C.L.J. 487). We are of opinion, therefore, that the first ground urged by the learned vakil for the appellant cannot be sustained." Per Mookerjee and Carnduff, JJ., in *Khubsurat Koer v. Saroda Charan Guha*, 14 C.L.J. 526=12 Ind. Cas. 165=16 C.W.N. 126.

(73) *Suprasanna Roy v. Upendra*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(74) *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614.

(75) *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614.

The Court has jurisdiction to place the whole of a joint estate out of which a plaintiff seeks to have his share partitioned in the hands of a receiver, and to order that a receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate.<sup>76</sup>

Where it was found as a fact in a suit for partition that the defendant was keeping the plaintiff out of possession of property to which he was admittedly entitled it was *held*, it was sufficient ground for placing the whole property in the hands of a receiver.<sup>77</sup>

(76) *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614.

The following observations of Petheram, C.J., and Pigot, J., of the Calcutta High Court are worthy of consideration :—" The first question mainly depends on the meaning to be given to the words ' property the subject of a suit ' in S. 503 of the Code of Civil Procedure, when the suit is one for the partition of a joint estate. Mr. Phillips for the appellants has contended that the sole purpose of such a suit being to give the plaintiff possession of a divided share, and for that purpose only to divide the joint property, the only property which is the subject of the suit is the plaintiff's share, whether joint or divided, and that the Court has no jurisdiction to place anything more than that share in the hands of a receiver. For the plaintiff it was contended that the property in suit is the whole joint estate, inasmuch as until it has been partitioned the plaintiff has an interest in every portion of it. I think that the contention of the plaintiff must prevail, as not only is he interested in every portion of the joint property before it is partitioned, but by the partition the title of each of the joint owners is changed, the decree being carried out by mutual conveyances between the joint owners of the interest of the others in the several shares allotted to each. This view appears to be in accordance with the practice of this Court, as it seems that receivers of the entire joint estate have been appointed in partition suits, and is also in accordance with the practice of the Court of Chancery in England acting under the Judicature Act, 1873, S. 25, sub-S. 8—see *Porter v. Lopes*, L R. 7 Ch. D 358, and with the practice of that Court before the passing of that Act (*Searle v. Smales*, 3 W.R. Eng. 437), even where there had been no exclusion." Per Petheram, C.J., and Pigot, J., in *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614 (618).

" The Court has power to grant to a receiver such powers for the protection, preservation, and improvement of the property as the owner himself has. It is in my opinion clear that when it is decided that the property in suit means the entire joint property, it follows that the words " the owner " at the end of the sub-S. (d) to S. 503, C.P.C., 1882, must mean the whole body of owners to whom the joint estate belongs ; and what we have to decide is, whether a power to raise money on the property itself *may* be necessary for its own preservation. In considering this question, we must have regard to the conditions under which estates are held in this country, one of which is that they are liable to be sold if the rents and revenue due upon them are not paid ; and when that fact is appreciated, it is apparent that the power to take the estate out of the hands of the owners and to place it in the hands of a receiver with power to do what is necessary for its protection must include a power to raise money to pay rent or revenue when it is necessary to do so, as, to hold otherwise would be to hold that a receiver appointed to protect the estate could not interfere to prevent its being lost to the parties interested, although his appointment put it out of their power to protect it themselves." Per Petheram, C.J., and Pigot, J., in *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614 (619). N.B. :—On these grounds it was held that the Court has jurisdiction to order that a receiver appointed in a partition suit shall be at liberty to raise money on the security of the whole of such joint estate.

(77) *Ramjiram v. Saligram*, 14 C.L.J. 215=14 C.W.N. 248=5 Ind. Cas. 96. In a partition suit " Property the subject of the suit " in S. 503 of the old Code means the whole joint estate. N.B. :—But the words " property the subject of the suit " find no place

In a suit brought under Act XX of 1863, the Civil Court has no jurisdiction to appoint a receiver or manager of *debutter* properties except under S. 5 of the Act, and under this section, a manager can be appointed only when there is a vacancy however caused, and when there is a dispute as to succession to the office. If a person wants relief beyond the scope of Act XX of 1863, he should proceed under S. 539 of the Code of Civil Procedure, 1882.<sup>78</sup>

Jurisdiction to appoint receiver in a suit under Religious Endowments Act.

In a suit on a mortgage deed, a receiver may be appointed although the mortgagor has become a bankrupt<sup>79</sup>; and a receiver already appointed may be continued although the mortgagor has in the meantime become a bankrupt and the official receiver claims to act as receiver.<sup>80</sup>

Jurisdiction to appoint receiver over estate of bankrupt mortgagor—Official Receiver.

In a suit by some members of a community against the other members for the appointment of a receiver for the management of the joint property of the community until a proper trustee is appointed by the community, it is not convenient to pass a decree for the appointment of a receiver. The proper form of the decree in such a case is one awarding possession to the plaintiff on behalf of the whole community, for whom the plaintiff sues, including the defendants in the suit.<sup>81</sup>

Jurisdiction to appoint receiver over property of a community.

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in O. 40, r. 1, and the only point we have really to consider upon this part of the case is whether there has been a substantial change in the law so as to give the Courts in India the same wide discretion as the Courts of Equity in England have had since the passing of the Judicature Act. We think that the fact that the rule as amended has been brought into conformity with O. 50, r. 6 of the English Courts which embodies S. 25, sub-S. (8) of the Judicature Act. . . . In order to give the Court power to do justice and consult the convenience of parties in cases where there may not be any proof of actual waste but where one of the parties is being kept out of all the property on the ground that nothing can be delivered to him until a complete partition is made seems to us the clear and obvious meaning of the law as it now stands amended. We are strengthened in this conclusion by the finding of Jessel, M.R., in *Porter v. Lopes*, (1877) 7 Ch. D. 358, where it appears that the learned Master of the Rolls considered that under the Judicature Acts, 1873, S. 25, sub-S. (8), the Court had jurisdiction to appoint a receiver until the trial in actions for partition, although there was no exclusive occupation." Per Holmwood and Chatterjee, JJ., in *Ramjiram v. Saligram*, 14 C.L.J. 215=14 C.W.N. 248=5 Ind. Cas. 96.

(78) *Gyanananda Asram v. Kristo Chandra Mukerji*, 8 C.W.N. 404. See Ss. 92 and 93 of the present Code of Civil Procedure (Act V of 1908).

(79) *Pease v. Fletcher*, (1875) 1 Ch. D. 273.

(80) *Deacon v. Arden*, (1884) 50 L.T. 584.

(81) Per Wallis and Sankaran Nair, JJ., in *Narayanan Chetti v. Ramasawmi Chettiar*, 4 Ind. Cas. 1069=19 M.L.J. 669.

It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary, or for so long as it may be so necessary.<sup>82</sup>

**Duration of receivership.**

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(82) See *Mathusri Umamba v. Mathusri Dipamba*, 19 M. 120 (P.C.)=23 I.A. 28. A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the estate allotted by the Government to the family of the deceased Maharaja of Tanjore, and directed that fresh appointments to the receivership should be made from time to time as occasion might require during the life of the senior widow under whose management the estate had been originally placed and the lives of the co-widows surviving her, or for so long as the Court might consider necessary: *Held*, that the decree directing the permanent receivership was not in variation of the judgment which it purported to follow, that the Court had a discretion to make such an order when necessary for the preservation of the estate; and that so doing was in accordance with the practice, there being nothing to prevent the Court from giving the management to the senior widow living at the time, if she should be fit to manage the estate on behalf of all interested in it. *Mathusri Umamba Boyi Saiba v. Mathusri Dipamba Boyi Saiba*, 19 M. 120 (P.C.)=23 I.A. 28=6 Sar. P.C.J. 684.



## CHAPTER V.

### GROUND'S OF APPOINTMENT.

Grounds of appointment of receiver—under the present Civil Procedure Code and the Code of 1882.

There must be *Prima facie* proof of necessity for a receiver.

Where neither party is in possession of the property.

Where defendant is in legal possession.

Possession of defendant followed by entry of his name in the Revenue Registers.

Length of defendant's possession and enjoyment.

Property in possession of tenant for life.

Property in possession of Hindu widow.

Property in possession of other Hindu female heirs.

Exclusion from possession of one of several tenants in common.

Co-sharer kept out of possession.

Waste by party in possession

Threatened waste.

Property in danger of being lost.

Property otherwise in jeopardy.

Misappropriation.

Mismanagement.

Fraud.

Incapacity to manage.

Account not being properly kept by party in possession.

Removal of large amount of property by defendant.

Defendant in possession attempting to absolve debtors by taking small amounts from them.

Plaintiff's title being clear and defendant's doubtful.

Cloud on defendant's title.

Insolvency of defendant.

Value of the property in dispute being large.

Amount of the income derived from such property being large.

Amount of expenditure being small.

Status of the persons claiming to hold the property—They being not men of means.

Extent of property must be such as to warrant the expense of receivership.

Where the subject-matter of litigation is trust property.

Where it is necessary to enforce lien.

Where it is necessary to enforce an order for payment of fund into Court.

In suits on mortgage—Interest being in arrears.

Security insufficient to pay mortgage debt.

(i) Decree for sale.

(ii) Decree for foreclosure.

Mortgagee decree-holder being restrained by injunction from selling mortgaged property.

In testamentary suits.

In suits against executors and trustees.

In suits between vendor and purchaser.

Collection of voluntary offerings (as) Fees paid by pilgrims to their priests.

Realization of amounts of decree under attachment.

Pendency of application for common manager no ground for non-appointment of receiver.

Probability of property fetching more by private sale than by forced sale.

Property being joint property of a community.

Consent of parties.

Grounds for appointment before answer under English practice.

The present Code of Civil Procedure<sup>1</sup> authorises the Court to appoint receivers whenever it deems it "just and convenient." The former Code of 1882<sup>2</sup> declared that the Court had power to appoint receivers only in cases where it was "necessary for the realization, preservation or better custody or management of any property moveable or immoveable, the subject of the suit." The law as enacted in the present Code gives our Courts the same power which the English Judicature Act<sup>3</sup> and the Rules<sup>4</sup> framed thereunder confer on the Courts in England.<sup>5</sup>

**Grounds of appointment of receiver under the present Civ. Pro. Code and the Code of 1882.**

(1) O. XL, r. 1.

(2) S. 503 of Act XIV of 1882.

(3) See S. 25, sub-S. 8 of the English Judicature Act.

(4) O. 50, r. 6 of the Supreme Court rules.

(5) The only difference between the wording of the Indian Code and the English rule is that in the one case the words used are "just and convenient" and in the other "just or convenient." This does not make any material difference between the two codes. See *Ramji Ram v. Salig Ram*, 14 C.W.N. 248 (250). A similar change was also effected in the English Law by the Judicature Act. Prior to that the English Courts had not such wide powers. It is only under that Act, S. 25 (8) that this wide power to appoint a receiver whenever it appears "just and convenient" was confirmed. In exercise of this power English Courts appoint now receivers in many cases in which the old Court of Chancery would not, as a matter of practice, have intervened. (*Cummins v. Perkins*, 1899, 1 Ch. 16, C.A.; per Lindley, L.J., at p. 20). Thus, a receiver may be appointed in the following cases, where under the old practice it is doubtful if the Court would have interfered:— (i) pending an action for trespass (*Percy v. Thomas*, 1884, 28 Sol. Jo. 533), (ii) at the instance of a legal mortgagee (*Tillet v. Nixon*, 1883, 25 Ch. D. 238), (iii) for the benefit of a mortgagee even after he has taken possession (*Mason v. Westoby*, 1886, 32 Ch. D. 206), (iv) to collect the rents and profits of land vested in legal tenants in common or joint tenants, even though no sense of exclusion be made out (*Porter v. Lopes*, 1877, 7 Ch. D. 358), (v) over the estate of a deceased person notwithstanding that no legal representative

Hence it has been declared in a recent case by the Calcutta High Court, that under O. 40, r. 1 of the Civ. Pro. Code, the Court has been given precisely the same discretion in questions of appointment of a receiver that the Courts in England have. The condition in the old Code that to justify such appointment in any case it should be found necessary to preserve property from waste and alienation having been removed, there has been a substantial widening of the Court's discretion.<sup>6</sup>

In another case which came before the same Court it was held that the words "just and convenient" in O. 40, r. 1 are derived from the English Judicature Act which greatly enlarged the powers which the Court of Chancery formerly exercised,<sup>7</sup> and the Courts in India have the fullest jurisdiction to appoint as well as to remove a receiver in the exercise of a sound judicial discretion.<sup>8</sup>

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has been constituted and no probate proceedings are pending (*Re Parker, Dearing v. Brooks*, 1885, 54 L.J. Ch. 694), (vi) at the instance of a judgment-creditor notwithstanding that he has not taken advantage of the legal remedies open to him (*Re Watkins, Ex parte Evans*, 1879, 13 Ch. D. 252, C.A.), provided the circumstances render it just and convenient. (*Manchester and Liverpool District Banking Co. v. Parkinson*, 1888, 22 Q.B.D. 173, C.A.), (vii) an order for the payment of money into Court may be enforced by the appointment of a receiver (*Stanger Leathes v. Stanger Leathes*, 1882, W.N. 71), (viii) or in any other case where the circumstances render it just and convenient. (*Re Prytherch, Prytherch v. Williams*, 1889, 42 Ch. D. 590). See Halsbury's Laws of England, vol. XXIV, 1912, pp. 348, 349.

(6) *Ramji Ram v. Salig Ram*, 14 C.W.N. 248=5 Ind. Cas. 96.

(7) Regarding the enlargement of the powers which the Court of Chancery formerly exercised, the following points may also be noted. It has been held by the English Courts that the words "just and convenient" which for the first time appeared in the English Judicature Act did not increase the power of the Court to the extent of altering the rights of parties so as to give to either of them a right which did not exist before the Judicature Act. (See *North London Railway Co. v. Great Northern Railway Co.*, 11 Q.B.D. 38). Nor did they enable the Court to issue an injunction or appoint a receiver in a case in which before the Act there was no legal right on the one side or no legal liability on the other side, either at law or in equity. Per Lord Esher in *North London Railway Co. v. Great Northern Railway Co.*, 11 Q.B.D. 38.

(8) *Srimati Mathuria Debya v. Shibdayal*, 14 C.W.N. 252=5 Ind. Cas. 27.

The following observations of Holmwood and Chatterjee, JJ, in the above case may well be noted; their Lordships said:—

"We find that the real ground of the order is the fact that the appellant is keeping the plaintiff out of possession of property to which he is admittedly entitled and this the Judge finds is a sufficient ground for placing the property in the hands of a receiver. The main contention of Mr. Garth is that this is not a sufficient ground and he contends that the principles which have governed these cases for many years under the Code of Civil Procedure of 1882, must still continue and that it would be extremely dangerous to alter the settled practice of the Courts in Bengal by a too liberal interpretation of r. 1, O. 40 of the present Code.

Under the old law it was laid down that in any case it must be shown that the property should be preserved from waste and alienation, (*Chandi Dat Jha v. Padmanand Singh*, 22 C. 459), and it is contended that the words "just and convenient" in the present rule cannot

Although the law thus gives the Courts a large discretion as to when and under what circumstances a receiver may be appointed, still it cannot be said that "the principles of care and caution which were laid down by the prior decisions have ceased to govern the practice of Courts in India."<sup>9</sup> The discretion to grant receivers must be guided by certain broad and well established principles which have governed previous practice and "which though unexpressed may be said to underlie the provisions of the present Code."<sup>10</sup>

be read as removing the safeguards under which such orders have always been made heretofore. The only point we have really to consider upon this part of the case is whether there has been a substantial change in the law so as to give the Courts in India the same wide discretion as the Courts of Equity in England have had since the passing of the Judicature Act.

We think that the fact that the rule as amended had been brought into conformity with Order No. 50, r. 6 of the English Courts which embodies S. 25, sub-S 8 of the Judicature Act, with a slight change of "and" for "or" which does not affect this case in any way, must lead us to hold that we have now precisely the same discretion in questions of the appointment of a receiver that the Courts in England have. We do not for one moment desire to hold that the principles of care and caution in passing such orders, which in ordinary cases necessitate an enquiry into the question of waste or alienation have ceased to govern the practice of the Courts in India, but the very form of the objection to our interference under sub-cl. (2) read with the decision in *Poresh Nath's case* (17 C. 614) above referred to illustrates the fact that there are cases, of which partition is notably one, where the limitations of the old rule would lead to an impasse and preclude justice being done. To get rid of these disabilities and to give the Court powers to do justice and consult the convenience of parties in cases where there may not be any proof of actual waste but where one of the parties is being kept out of all the property on the ground that nothing can be delivered to him until a complete partition is made seems to us the clear and obvious meaning of the law as it now stands amended. We are strengthened in this conclusion by the finding of Jessel, M.R. in *Porter v. Lopes*, (1877) 7 Ch. Div. 358, where it appears that the learned Master of the Rolls considered that under the Judicature Act, 1873, S. 25, sub-S 8, the Court had jurisdiction to appoint a receiver until the trial in action for partition, although there was no exclusive occupation.

As the provisions of the Judicature Act have been substantially incorporated in O. 40, r. 1, we have no hesitation in following this very high authority.

We can, therefore, have no doubt that on the merits of the case this is, as the learned Judge in the Court below has held, eminently a proper case for the appointment of a receiver." Per Holmwood and Chatterjee, JJ. in *Ramji Ram v. Saligram*, 14 C.W.N. 248 at pp. 249-251=5 Ind. Cas. 96.

(9) Per Holmwood and Chatterjee, JJ., in *Ramji Ram v. Salig Ram*, 14 C.W.N. 248 (250)=5 Ind. Cas. 96. "A reference to the various decisions upon motions for the appointment of receivers shows that each case has been made to depend upon its own peculiar features." See the judgment of the Court in *Mays v. Rose*, Freem. (Miss) 703 at p. 718.

(10) See Woodroffe on Receivers, 2nd Ed., 1910, p. 101; Lindley, L.J. referring to the similar extension of jurisdiction to the Courts in England said in the case of *Holmes v. Millage*, (1893), 1 Q.B. at p. 558. "We cannot judicially hold the appointment of a receiver in a case in which no Court could grant a receiver before the Act to be 'just and convenient' within the meaning of the Judicature Act, 1873, S. 25 (8)." But see also the remarks of Jessel, M.R., in *Gawthorpe v. G.*, W.N. 78 (91), where his lordship is reported to have said that "there is no limit to the power of the Court" under the above section of the Judicature Act to appoint a receiver on motion except that is only to be exercised when it appears to the Court to be "just and convenient."

Hence it is one of the primary principles that guide the Court in considering whether, in any particular case, sufficient grounds have been laid for the intervention of the Court, to see that there is at least *prima facie* proof, that the "property which it is essential to be kept in its existing condition, is in danger of being destroyed, damaged or put beyond the power of the Court."<sup>11</sup>

No doubt, as we have already seen, in the matter of appointment of receivers very little help can be derived from previous decisions. And although each case has to be decided on its own merits,<sup>12</sup> yet a reference to the observations of eminent Judges in dealing with receiver-ship applications both in this country and in England may not be without value. We shall therefore examine in the course of this chapter some of the cases in which the appointment of receiver was asked for, the grounds alleged in support of the application for the appointment, the reasons adduced by the party opposing the application in support of the opposition, and the circumstances that weighed with the Court in granting or rejecting the application.

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(11) Per Phear, J. in *Mun Mohinee v. Jehamoyee Dossee*, 13 W.R. 60. The following observations of Trevelyan and Beverley, JJ., may also be noted. Though they were made with regard to the grant of injunction they apply with greater force to the appointment of receivers, because the appointment of receiver is a much more stringent measure than the grant of a temporary injunction. Their Lordships say "It is enough to say, that in the proceedings before us there is no trace of such an assertion of right enjoyed or of wrong done, as in our opinion to justify the granting of an injunction. We must take leave to say this that the power of granting an injunction is one which has been perhaps a little lavishly bestowed upon the Courts in the mofussil in this country. It is a tremendous power, and one which the superior Courts most carefully guard themselves from exercising hastily or without solid grounds. And this is not the first occasion by any means in which the exercise of the power, which has been conferred upon the smaller Courts in the mofussil, has led to results by no means satisfactory. Here a business, for ought we know, a valuable business, has been suddenly and peremptorily stopped, and stopped; as we must now pronounce it, in this Court, to have been without the slightest legal foundation laid before the Court. We must express our regret that the officer who granted the injunction had not before him, when the application to dissolve the injunction was made, the legal considerations which ought to have then guided him. He plainly does not understand the character of the jurisdiction he was exercising, and he is not to be blamed for that. A jurisdiction, originally, and perhaps properly, belonging only to superior Courts possessed of legal knowledge and experience, is imposed on Courts in the mofussil which sometimes share with the victims of its exercise, the inconvenience of its being so imposed on them. It would be unfair to blame such tribunals much, if they do sometimes go astray in the use of it." *Baddam v. Dhunput Sing Bahadur*, 1 C.W.N. 429 at pp. 430, 431.

(12) Per Ayling and Spencer, JJ. in *Sivagnanathammal v. Arunachellum Pillai*, 21 M.L.J. 821 (822) = 2 M.W.N. (1911) p. 75 = 11 Ind. Cas. 370 = 10 M.L.T. 490.



Thus, one of the cases, where the Courts have granted the application, almost as a matter of course, is where the property which is the subject of the suit is found to be in the possession of neither of the parties to the suit.

Where neither party is in possession of the property.

Hence, where there is a dispute regarding certain property, and it is deemed desirable that the Court should take such property over to its custody through a receiver, and it is found that neither party is in actual possession of such property, the Court would appoint a receiver as a matter of course. Thus it has been said that "Where the property is, as it were, *in medio*, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation as to the right of probate or administration. No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to any one by taking it and preserving it for the benefit of the successful litigant."<sup>13</sup>

Where defendant is in legal possession.

A receiver would not be appointed in supersession of a *bona fide* possessor of the property in controversy unless there is some substantial ground for interference.<sup>14</sup>

(13) Per Lord Cranworth, J. in *Owen v. Homan*, 4 H.L.C. at pp. 1032, 1033. *Jibanessa v. Majidunnessa*, 17 C.W.N. 581 (583)=18 Ind. Cas. 398.

"Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue, the Court could hardly go wrong in appointing a receiver." *Jibanessa Khatun v. Majidunnessa Khatun*, 17 C.W.N. 581=18 Ind. Cas. 398.

(14) *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252=5 Ind. Cas. 27. (*Sidheswari Debi v. Abhoyeswari Debi*, 15 C. 818, followed; *Mohunt Siaram Das v. Mohunt Mohabir Das*, 5 C.W.N. 62; *Sham Chand Giri v. Bhava Ram Pandey*, 5 C.W.N. 365, Referred to) See also Civ. Pro. Code (1908), O. XL, rr. 1 & 2. In this case held, on the facts, that the charge of waste against the defendant in possession had not been established and that plaintiff's delay in instituting the suit was such as to disentitle him to relief by appointment of a receiver. *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252=5 Ind. Cas. 27.

The following remarks of the Court in the course of the judgment may also be noted:—

"The order of the Subordinate Judge has been assailed on five grounds; *first*, that the defendant is in peaceful possession of the estate, on title, and after lawful entry *secondly*, that she is not committing waste, much less, malicious waste; *thirdly*, that there is no danger of mismanagement by the defendant, because she is being assisted by a committee of legal gentlemen; *fourthly*, that the plaintiff, Sivdial Singh, has not made out a strong case; and, lastly, that the plaintiffs have delayed to sue and have acquiesced in the long possession of the defendant, Mathuria Debi." *N.B.*:—These objections were allowed to prevail and the order of the lower Court appointing receiver was set aside by the High Court. *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252=5 Ind. Cas. 27.

A receiver should not be appointed in supersession of a *bona fide* possessor of the

The Court will not interfere by appointing a receiver where a right is asserted to property in the possession of a defendant claiming to hold it under a legal title, unless a strong case is made out.<sup>15</sup>

Consequently, it has been held that the facts that the defendant is in legal and exclusive occupation of the property, that he is registered in the Revenue records as the sole proprietor, and that he has asserted his title and lien in the enjoyment for some time past, are grounds that would weigh with the Court against appointing a receiver.<sup>16</sup>

Possession of defendant followed by entry of his name in the Revenue registers.

The fact that certain parties were in possession for a long period before suit, say 10 or 12 years, is a circumstance that will weigh with the Court, and the Court will not, except for strong reasons, oust such a person from possession by appointing a receiver.<sup>17</sup>

Length of defendant's possession and enjoyment.

As a rule a receiver should not be appointed in respect of property in the possession of a tenant for life unless gross mismanagement and waste on the part of the defendant is made out.<sup>18</sup>

Property in possession of tenant for life.

property in controversy unless there is some substantial ground for interference. Per Ayling and Spencer, JJ. in *Sivagnanathammal v. Arunachellum Pillai*, 21 M L J. 821 (823)=2 M.W.N. 75=11 Ind. Cas. 870=10 M.L.T. 490.

(15) *Owen v. Homan*, 4 H.L.C. 997 (1032) and *Clayton v. The Attorney General*, Cooper's cases in Chancery, Vol. 1, p 97 and *Prosonomoyi v Beni Madhub*, 5 A 556, referred to with approval and followed in *Sidheswari Dabi v. Abhoyeswari Dabi*, 15 C. 818=13 Ind. Jur. 258.

(16) *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C W.N. 252 (254)=5 Ind. Cas. 27.

(17) *Raja Ram v Thakurain Sheorani*, 7 Ind. Cas. 344 (346) (Per Knox, J.); In *Sidheswari's case*, 15 C. 818, the elder widow was the defendant against whom an order for the appointment of a receiver was sought by the plaintiff, the junior widow of the Raja of Bijni. The order appointing the receiver was discharged by the High Court on the facts among which were the following:—The defendant was in exclusive possession of the property claimed: she was the sole registered proprietor: she had put forward her title four years prior to the institution of the suit, ever since the Raja's death; and she was allowed to assume the entire management. See the same cited and followed in *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C W.N. 252 (254)=5 Ind. Cas. 27. The Court also takes into consideration the length of defendant's possession. See *John v. John*, [1898] 2 Ch. 573 C.A.; *Jones v. Jones*, [1817] 3 Mer. 161, cited in Halsbury's Laws of England, Vol. XXIV, S. 645, p 350.

It would be a very improper use of the powers conferred on a Court to take out of the hands of ladies, who appear to be ladies of culture and well capable of managing their property and examining accounts, property of which they have been in possession for something like two years, and hand over the property to a receiver, upon nothing more than passing rumours. *Tej Bai Bikram Singh v. Ramraj Kuar*, 11 Ind. Cas. 703.

(18) *Jiwani v. Labhu Ram*, 107 P.R. 1908=12 P.L.R. 1909=14 Ind. Cas. 694.

We have already seen that a *bona fide* possessor should not ordinarily be displaced from any of the just rights attached to his or her title unless there be some equitable ground for interference.<sup>19</sup>

Property in possession of Hindu widow.

This principle applies as much to the case of a Hindu widow in possession of her inherited property as in the case of any other person.<sup>20</sup> Hence, to justify the appointment of an *ad interim* receiver in a suit against a Hindu widow who is in *bona fide* possession of the property, in virtue of her legal title to it, and which possession she would be admittedly entitled to for her life even if plaintiff succeed in the suit (the suit being one for declaring an alleged will of the last male owner a forgery) there should be some equitable ground for such appointment, and a Court will be acting wrongly in appointing a receiver on bare grounds of expediency in the absence of specific proof of waste, etc.<sup>21</sup>

Property in possession of other Hindu female heirs.

The same principles apply to the case of property in the possession of any other Hindu female heir; because the right of the widow and the right of other heirs obtaining property by inheritance are the same in

Hindu Law.<sup>22</sup>

Exclusion from possession of one of several tenants in common.

If a tenant in common of property is excluded by the other tenants in common from his share of the rents of the property, he is entitled to a receiver of the whole property.<sup>23</sup>

(19) *Sivagnanathammal v. Arunachellum Pillai*, 21 M L J. 821 = (1911) 2 M.W.N. 75 = 11 Ind. Cas 870 = 10 M.L.T. 490. See *Sidheswari's case*, 15 C. 818, cited in *Srimati Mathuria Debya v. Shibdyal*, 14 C.W.N. 252 (254) = 5 Ind. Cas. 27.

(20) *Ibid.*

(21) *Ibid* The Court in the course of the judgment said :—" The plaintiffs are the masters of the litigation. If, in addition to that advantage, we were to anticipate their success in the present action, we should be placing the defendant in a position in which the circumstances of this case do not justify us in placing her." Per Ayling and Spencer, JJ. in *Sivagnanathammal v. Arunachellum Pillai*, 21 M L J. 821 (824) = (1911) 2 M.W.N. 75 = 11 Ind. Cas 870 = 10 M L T. 490 (14 C.W.N. 252, F.). But a receiver will be appointed for the protection of the fund when plaintiff has an equitable interest, and defendant having possession of the property is wasting it, or removing it beyond the jurisdiction of the Court. *Vose v. Reed*, 1 Woods, 647.

(22) See Mayne's Hindu Law, 5th Ed., S. 565, p. 701. This rule is subject to some exceptions in Bombay. See *ibid.*, S. 569, p. 708.

(23) *Street v. Anderton*, (1793) 4 Bro. Ch. Cas. 414; *Tyson v. Fairclough*, (1824) 2 Sim & St. 142; *Brenan v. Preston*, (1852) 2 D.M. & G. 813; *Ramji Ram v. Salig Ram*, 14 C.W.N. 248 = 5 Ind. Cas. 96.

Where, therefore, in a suit for partition of joint family property, it was proved that a co-owner, admittedly entitled to a half share in a considerable portion of the properties in suit, was being kept out of possession by the other co-owner, with the result that all supplies were cut off from his branch of the family, it was held that, although no case of waste might have been established against the co-owner in possession, the case was eminently a proper one for the appointment of a receiver.<sup>24</sup>

**Co-sharer kept out of possession.**

**Waste by party in possession.**

The ground on which the appointment of receiver is most often asked for and granted is the prevention or repetition of waste by the defendant in possession.<sup>25</sup>

**Threatened waste.**

Even threatened waste would be good ground for the appointment of a receiver.<sup>26</sup>

(24) *Ramji Ram v. Saligram*, 14 C.W.N. 248=5 Ind. Cas. 96

(25) *Sia Ram Das v. Mohabir Das*, 27 C. 279=5 C.W.N. 362; *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252=5 Ind. Cas. 27; *Sham Chand Giri v. Bhaya Ram Panday*, 5 C.W.N. 365; *Tanikachala Mudaliar v. Alamelu Ammal*, 16 M.L.T. 26; *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=6 Ind. Cas. 659=36 P.R. 1910=72 P.L.R. 1910; *Hanumayya v. Venkatasubbayya*, 18 M. 23.

(26) *Kesar Devi v. Partab Singh*, 39 P.R. 1908=91 P.W.R. 1908=185 P.L.R. 1908.

A receiver should not be appointed to take charge of property in the hands of a defendant unless—(a) there is a fair probability of the suit succeeding; and (b) there is an allegation that the defendant is wasting, or about to waste, the property, or is incapable of managing it; and (c) there is some proof of this allegation by affidavit or otherwise. Per Johnstone, J., in *Kesar Devi v. Partab Singh*, 39 P.R. 1908=91 P.W.R. 1908=185 P.L.R. 1908.

For the grant of a receivership or an injunction, it is not necessary that a wrong should actually have been committed before the Court can interfere; because if the law requires an actual commission of the wrong before the Court interpose its protective hand, it may so happen that, in most cases, the very purpose for which relief is sought for will be defeated. Hence it is that these remedies sometimes called "extraordinary remedies" seek to restrain the prevention of the wrongful act even while it is yet in contemplation. See Story's Eq. Jur., 8th Ed., Vol. II, S. 826. Hence it is that satisfactory proof that the party complained against threatens the commission of the wrong, which is within the power of such party to commit is sufficient ground to justify the grant of a temporary injunction or receiver (*Ibid.*). *Satoor v. Satoor*, 2 M H.C. 8 (10, 11). But see the following observations of Rattigan, J., in 53 P.W.R. 1910.

The appointment of receiver should only be granted where some specific act of misappropriation, malversation or mismanagement is shown but not on a mere apprehension of future waste; and this principle is particularly to be applied in case of partition of Hindus' joint property in the hands of the eldest brother who according to Hindu Law is in the position of manager of that property. *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=6 Ind. Cas. 659=36 P.R. 1910=72 P.L.R. 1910, distinguishing *Budhwanti v. Bishen Kaur*, 73 P.R. 1902, and referring to *Poresh Nath Mukerjee v. Omerto Nath Mitter*, 17 C 614, and *Hanumayya v. Venkatasubbayya*, 18 M. 23.



The fact that the property would be in danger of being lost if left in the care and control of the defendant in possession is also a good ground for the appointment of a receiver.<sup>27</sup>

If the security, as in the case of a mortgage, is in jeopardy, the Court will appoint a receiver on the application of the mortgagee or other person entitled to the benefit of the security,<sup>28</sup> even though the principal money may not have become due, and no interest is in arrear, and there is no breach of contract.<sup>29</sup> What induces the Court to appoint the receiver is the necessity for it, and not the consent of the parties. Hence, it has been held that the consent of the mortgagor to the appointment is not sufficient to induce the Court to appoint, if otherwise, the Court deems the appointment not necessary.<sup>30</sup>

Misappropriation of the property, even under such circumstances, as to amount to a criminal offence, would be good ground for the appointment of a receiver.<sup>31</sup>

The fact that the defendant in possession is only entitled to a life estate or other limited interest in the property, and that such person is grossly mismanaging the property to the prejudice of other persons interested in it either in the present or in the future, would be a good ground for the appointment of a receiver.<sup>32</sup>

Where the plaintiff sued to recover property in the possession of his adoptive mother and the suit was resisted *inter alia* on the ground that the defendant was entitled to retain possession of the estate for her life, it was held that O. XL, r. (2), which clearly refers to a case of removal of property from the possession or custody of a person other than the parties to the suit, was no bar to the appointment of a receiver

(27) *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495.

(28) *Duke of Grafton v. Taylor*, (1890), 7 T.L.R. 588.

(29) *Wildy v. Mid-Hants Railway Co.*, 16 W.R. 409 (Eng.); *McMahon v. North Kent Ironworks Co.*, (1891) 2 Ch 148; *Re London Pressed Hinge Co.*, (1905) 1 Ch. 576.

(30) *Re London Pressed Hinge Co., Ltd.*, (1905) 1 Ch. p. 583.

(31) *Hanumayya v. Venkatasubbayya*, 18 M. 23. "The fact that the acts complained of amount to misappropriation rather than waste makes no difference for the purposes of appointment of receiver." *Ibid.*

(32) *Kumar Satya Narain Singh v. Srimati Rani Keshabati Kumari*, 18 C.W.N. 537. See also *Sant Ram v. Ram Chand*, 53 P.W.R. 1910=6 Ind. Cas. 659=36 P.R. 1910=72 P.L.R. 1910.



on the application of plaintiff when it was established that the estate was being grossly mismanaged by the defendant.<sup>33</sup>

The fact that the possession of the property by the defendant was obtained by fraud is an important factor that would be considered by Courts. Such a possession would not be allowed to continue. The Courts, if there be no other impediments, would be inclined to deprive the defendant of his possession based on fraud and entrust it to a receiver, pending suit.<sup>34</sup>

The fact that the defendant in possession is not capable of managing the property is also sometimes considered by the Courts to be a good ground for appointment of a receiver.<sup>35</sup>

That the party in possession of the property, of which he is not the sole owner, is not keeping proper accounts of the income and expenditure is good ground to remove him from possession and management pending the suit, and to entrust it to a receiver.<sup>36</sup>

The removal of a large amount of property by the defendant, and under circumstances which might fairly give rise to suspicion, during the pendency of the suit in which the question of title to that property would be determined, is a sufficiently strong ground for the appointment of a receiver.<sup>37</sup>

(33) *Kumar Satya Narain Singh v. Srimati Rani Keshabati Kumari*, 18 C.W.N. 537.

The following observations of Chitty and Teunon, JJ., may also be noted :—" We have carefully perused the evidence tendered on this application and heard the arguments of Counsel for defendant against the appointment of a receiver. We are of opinion that a clear case has been made out for such appointment. There has been and still is gross mismanagement of the estate by defendant and if the present state of things be allowed to continue the whole estate will be jeopardised. It was argued that defendant had borrowed only on personal security and had not so far charged the estate. If, however, she borrows in such reckless fashion as to absorb the whole legitimate income of the estate it is obvious that the estate itself will immediately suffer. It cannot much longer be kept intact. We do not think that any useful purpose would be served by discussing in detail the facts disclosed in the several affidavits. No satisfactory reply has been vouchsafed by defendant or rather by those who profess to be looking after her affairs to the specific charges put forward on behalf of the plaintiff. We accordingly allow this appeal and direct that a receiver be appointed as prayed by the plaintiff." *Kumar Satya Narain Singh v. Srimati Rani Keshabati Kumari*, 18 C.W.N. 537 (538, 539).

(34) See the judgment of the Court in *Mays v. Rose*, Freem. (Mass.) 703 (718).

(35) *Kesar Devi v. Partab*, 39 P.R. 1908=91 P.W.R. 1908=185 P.L.R. 1908.

(36) *Raja Ram v. Thakurain*, 7 Ind. Cas. 344.

(37) *Sia Ram Das v. Mohabir Das*, 27 C. 279=5 C.W.N. 362, referring to *Sidheswari Dabi v. Abhoyeswari Dabi*, 15 C. 818=13 Ind. Jur. 258, *Chandidat Jha v. Padmanand Singh Bahadur*, 22 C. 459 and Suit No. 179 of 1893, judgment of the High Court.

The removal of property by the defendant beyond the jurisdiction of the Court is good ground for such appointment.<sup>38</sup>

Defendant in possession attempting to absolve debtors by taking small amounts from them.

The fact that the defendant in possession is attempting to absolve the debtors to the estate from liability by realizing only small portions of the amount due from them may sometimes induce the Court to take the management out of the hands of such defendant and entrust it to a receiver.<sup>39</sup>

Plaintiff's title being clear and defendant's doubtful.

Where plaintiff's title is clear and defendant's doubtful and plaintiff applies for a receivership, the Court would appoint a receiver for the protection of the plaintiff's interests.<sup>40</sup>

dated 5th March 1894. See also *Sham Chand v. Bhaya*, 5 C.W.N. 365; *Kumar Satya v. Srimati Rani*, 18 C.W.N. 537.

In considering whether a receiver is to be appointed or not the Court has often paid attention to the following circumstances:—

- (i) Conduct of defendant in possession;
- (ii) Whether he has removed away any portion of the property in dispute;
- (iii) Whether he is in any way dishonest or fraudulent in the collections of outstandings due to the estate;
- (iv) Whether the defendant is a man possessed of any property of his own;
- (v) His age and experience;
- (vi) His capacity to manage business; and
- (vii) The value of the property which is the subject of the suit. See *Kumar Satya v. Srimati Rani*, 18 C.W.N. 537 (538). The following extract from the judgment of Rampini, J., in *Ram Sunder Dass v. Kamal Jha alias Kamal Das* in 32 C. 741 at p. 744 may well be noted:—

"The circumstances that the defendant has already removed some money, crops and other moveables belonging to the *asthal*, that he is trying to absolve the debtors from liability by realising only small portions of the amount due from them, and that he is still trying to misappropriate the very large quantity of winter paddy, the output of the current year, and to waste the other properties of the *asthal* are also matters which are calculated to raise suspicion about the *bona fides* of the transactions alleged by the defendant. Further it appears from the affidavits filed on behalf of the plaintiff that the defendant is a man of straw and is possessed of no worldly property, and that he, being young, has no ability to manage such a big estate, the annual income of which is about twenty-four thousand Rupees." *Ram Sunder Dass v. Kamal Jha alias Kamal Das*, 32 C. 741 (744). "We will, however, only say this that the property is of very considerable value, that the claimants are both mendicants and have no worldly property of their own, and that acts of waste have been found to have been committed by the defendant, who is now in possession. For all these reasons we are unable to disturb the orders complained against (*i.e.*, order appointing receiver), in this case and we dismiss this appeal with costs." *Ram Sunder Dass v. Kamal Jha alias Kamal Das*, 32 C. 741 (745). (Per Rampini, J.)

(38) *Vose v. Reed*, 1 Woods, 647.

(39) See per Rampini, J., in *Ram Sunder Dass v. Kamal Jha*, 32 C. 741 (744).

(40) See *Mussammat Budhwanti v. Mussammat Bishen Kour*, 59 P.L.R. 1902=73 P.R. 1902. The following remarks of Lindlay, M.R., in *John v. John*, L.R. 1898, 2 Clo. 573 (578) may also be noted:—

So also the fact that there is a cloud on the title set up by the party in possession is a circumstance that would lead the Court to appoint a receiver.<sup>41</sup>

The fact that the defendant in possession, against whom a receiver is sought for is in insolvent circumstances, is frequently relied upon by the Courts as a ground for granting the relief.<sup>42</sup> No doubt insolvency of the party in possession is a very strong ground and always weighs much with the Courts in dealing with applications for the appointment of a receiver. But, it is also to be observed that insolvency will not of itself warrant a Court in appointing a receiver. It must also appear that plaintiff has a probable cause of action against the defendant, and that the benefit to result from his recovery will either be wholly lost or substantially impaired by reason of such insolvency, unless a receiver is appointed.<sup>43</sup> On the other hand, if the case is, in other respects, a proper one for the appointment of a receiver, the relief may be granted although it appears that the defendant is entirely solvent.<sup>44</sup>

In a suit on a mortgage deed, a receiver may be appointed notwithstanding that the mortgagor has become a bankrupt<sup>45</sup>; and a receiver already appointed may be continued, though the mortgagor has in the meantime become a bankrupt, and the official receiver claims to act as receiver.<sup>46</sup>

"I do not believe in the title of the defendant. I cannot decide in the present proceedings that she has no title, and it may be on the hearing I shall be converted, but at present I do not believe in her title. Under these circumstances, believing in the title of the plaintiff and not believing in the title of the defendant and seeing that the rents are in jeopardy, it appears to me that it would be wrong to refuse a receiver." See the same cited and followed in *Mussammatt Budhwanti v. Mussammatt Bishen Kour*, 59 P.L.R. 1902=73 P.R. 1902. (See the Judgment of Chatterjee, J.).

(41) See the judgment of Rampini, J., in *Ram Sunder Dass v. Kamal Jha alias Kamal Das*, 32 C. 741 (743).

(42) See *Leavitt v. Yates*, 4 Edw. Ch. 162; *Mays v. Rose*, Freem. (Miss.) 703 at p. 718.

Insolvency and danger to the fund, pending the litigation, with a *prima facie* case, and probable cause for sustaining the action are sufficient in the first instance to find an injunction and a receivership upon without going minutely into the merits. See *Leavitt v. Yates*, 4 Edw. Ch. 162, (per Mc. Conn. V.-C.), cited in Banerjee's Specific Relief Tagore Law Lectures, 1906, p. 687 Note. See also *Sham Chand v. Bhaya Ram*, 5 C.W.N. 365.

(43) *Gregory v. Gregory*, 33 N. Y. Supr. Ct. R., opinion of Jones, J., p. 39; *Lawrence Iron Works v. Rockbridge Co.*, 47 Fed. 755.

(44) *Mead v. Burk*, 156 Ind. 577, 60 N. E. 338; see also High on Receivers, S. 18, pp. 25, 26.

(45) *Pease v. Fletcher*, (1875) 1 Ch. D. 273.

(46) *Deacon v. Arden*, (1884) 50 L.T. 584.

Value of the property in dispute being large.

Amount of the income derived from such property being large.

The extent of the property is also an important consideration. The greater the value of the property and the income to be derived therefrom, the more would be the necessity for the appointment of a receiver.<sup>47</sup>

Where, in addition to the property being of great value, and the profits large, the Court finds that the amount of expenditure is comparatively small, and that there is a probability of large surplus remaining in the hands of the party in possession, whose conduct is such as not to favourably impress the Court with the case for a receivership becomes much stronger.<sup>48</sup>

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(47) See *Sia Ram Das v. Mohabir Das*, 27 C. 279 at pp. 284, 285=5 C.W.N. 362; *Ranganayagi Ammal v. Mahali Pillai*, 4 L.B.R. 356.

The following observations of Knox, J. may also be noted :—" The profits of the estate are large and it is undoubtedly convenient that whilst the dispute is pending the property should be in charge of an independent person like the Collector of Cawnpore " *Raja Ram v. Thakurain Sheorani Kuer*, 7 Ind. Cas. 344 (346). (Per Knox, J.).

(48) *Raja Ram v. Thakurain*, 7 Ind. Cas. 344. In such cases the fact that defendants were in long and continued possession of the property is no ground for not appointing a receiver. (*Ibid*).

The following observations of Knox, J. in the course of the judgment may also be noted :—" The main reasons that prevailed with the Subordinate Judge were that so far as he could see without prejudging the case, the plaintiff had a *prima facie* strong claim. The estate at stake was large and the profits were large. The management of the defendant, even before, had been challenged, and in the course of these proceedings it appeared that there were no accounts kept of the management and that there was considerable laxity regarding vouchers connected with expenditure. Our duty, it appears to us, is to take a broad view of the circumstances alleged on both sides and to see how far it is just and convenient that a receiver should be appointed. Regarding the question of convenience, there can be little room for doubt. When an estate like the present one in dispute has come down as an impartible Raj from generation to generation practically unimpaired and solid as it originally was and has now passed into the hands of priests appointed for the carrying out of certain religious and charitable bequests, the expenses of which are set out as Rs. 4,000 annually and there remains a balance of Rs. 21,000 per year, which seems to have been spent without much regard to method or account keeping, it is beyond all doubt convenient that a person like the Collector of Cawnpore should be appointed to preserve the property pending the litigation which is to decide the rights of the litigating parties. The position of the estate is in one way peculiar. Those who now lay claim to it have never been in enjoyment of it. They have only had to stand, so to speak, on the outside. Those who are now in occupation of the estate are likewise parties, who prior to the making of the alleged trust deed by Rewatains Baghelin and Janwarin, were also persons who have not been in possession. The expenses necessary for the purposes of the trust are small. The profits of the estate are large and it is undoubtedly convenient that whilst the dispute is pending the property should be in charge of an independent person like the Collector of Cawnpore. The only real difficulty which we are met with is that the appellants have been in possession for the last 10 or 12 years. In considering this matter, we have to remember the opinion of the Court of First Instance, which is entitled to great weight. It had all the

A large impartible estate was bequeathed by the widow of the last male owner for some religious and charitable purposes. The trustees were put in possession of the property and they remained so far over 10 years, when a suit to set aside the bequest was brought by one of the claimants of the estate. The profits of the estate were large and the expenses necessary for the purposes of the trust were small. The trustees, moreover, in making the expenses paid no due regard to any method of account. Under such circumstances, the Court held that it was convenient to appoint a receiver of the property pending the decision of the suit.<sup>49</sup>

If added to these facts the claimants to the property are not men of means, and if it would be difficult or impossible to get back the income from such persons, if, in the end, it should be found that they were not entitled to have been in possession, the case for the appointment of a receiver will become all the stronger.<sup>50</sup>

Status of the persons claiming to hold the property—They being not men of means.

Extent of property must be such as to warrant the expense of receivership.

It has further been held that the appointment should only be made where the amount of the debt or property involved warranted the expense and where there was a fair prospect of there being something for the receiver to receive.<sup>51</sup>

facts and the parties before it and it was in a far better position to decide whether having regard to the circumstances of the case, it was just that a receiver should be appointed. That Court has come to the conclusion that a receiver should be appointed. It was for the appellants to show that that Court exercised its discretion improperly. In our opinion they have failed to do this. This being so, we are not prepared to interfere with the discretion exercised by the Court below. *Raja Ram v. Thakurain Sheorani Kuer*, 7 Ind. Cas. 344 at pp. 345, 346. (Per Knox, J.)

(49) *Raja Ram v. Thakurain*, 7 Ind. Cas. 344.

(50) See the observations of Justices Rampini and Pratt in *Sia Ram Das v. Mahabir Das*, 27 C. 279 at pp. 284, 285 = 5 C.W.N. 362.

In this connection the following observations of Justices Rampini and Pratt of the Calcutta High Court are worthy of consideration :—“ Taking the whole of the circumstances of the case into our consideration, we think that this is a case in which a receiver should be appointed. The property at stake in this case is very large. The immoveable property is estimated to be worth 3 or 4 lakhs of rupees; and the moveable property is said to be worth more than a lakh. The income from the immoveable property is, moreover, said to amount to thirty or forty thousand rupees per annum. The claimants of the property are mendicants, and apparently possessed of no worldly property whatsoever, and we think that until the rights of the claimants of this property are decided, it is proper that a receiver should be appointed. Per Justices Rampini and Pratt in *Sia Ram Das v. Mohabir Das*, 27 C. 279 at pp. 284, 285 = 5 C.W.N. 362.

(51) *T. v. K.*, (1884) W.N. 63.

By Ord. L. r. 15A of the Rules of the Supreme Court it is provided as follows : “ In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to



Where the property which is the subject of litigation is admittedly

Where the subject matter of litigation is trust property.

trust property, the Courts would be inclined to grant a receiver even more readily than in the case of private property. In such cases, the Courts may not require such strong proof of waste or mismanagement as it would require in the case of private property.<sup>52</sup>

Where it is necessary to enforce lien.

A person who has a right to be paid out of a particular fund is entitled to the appointment of a receiver in a proper case to protect the fund from being misapplied.<sup>53</sup>

the *probable costs of his appointment*, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment." As to the practice of accepting the bond of the defendant in possession in lieu of appointment of receiver in case where the property is small, see Chapter III, Appointment of Receivers.

(52) *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252=5 Ind. Cas. 27; see also *Raja Ram v. Thakurain*, 7 Ind. Cas. 344.

"In the case of a dispute concerning property in the nature of trust property, a receivership order is eminently desirable on public, no less than private grounds. We believe that, in such circumstances, the Courts are not slow to appoint a receiver, and they would do so more readily than in the case of an ordinary succession." *Sham Chand Giri v. Bhava Ram Pandey*, 5 C.W.N. 365 and *Mohunt Siaram Das v. Mohunt Mohabir Das*, 5 C.W.N. 362, referred to with approval in *Srimati Mathuria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252 (255)=5 Ind. Cas. 27. (See the judgment of Caspersz and Doss, JJ.).

Where, under a trust-deed, the mortgaged properties were vested in trustees, but the estate they took was subject to mortgages, the trustee to continue in possession and manage the properties with a view to the liquidation of the mortgage-debt by periodical payments, and one of the trustees died and the surviving trustee was absent for a long period from the country, and the stipulations in the trust-deed were not carried out: *Held*, that the mortgagees were entitled to ask for the appointment of a receiver. Although the trust-deed was assented to by the mortgagees, it did not, in any way, abridge their statutory right to ask for the interference of the Court. *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495.

(53) See *Riviere on Receivers and Managers*, 1912, p. 31. See also *Mays v. Rose*, *Freem.* (Miss.) 703 (718). So a person entitled to taxed costs out of the separate property of a married woman is entitled to a receiver of her share of an estate about to be distributed by trustees, even before the taxation of the costs has been completed. (*Re Peace and Waller*, 1883, 24 Ch. D. 405; *Cummins v. Perkins*, 1899, 1 Ch. 16; see also *Taylor v. Emerson*, 1843, 4 Dr. & War. 117). So also a wife entitled to alimony after divorce proceedings was held entitled to the appointment of a receiver of her husband's interest in a settled fund where he threatened to sanction an advancement to the children which would have diminished his interest in such fund. [28 W.R. 381 (Eng.)]. If a debtor makes an assignment to trustees in favour of his creditors, and then disputes the validity of such assignment, a receiver may be appointed of the property comprised in such assignment pending a decision as to the validity of the deed. (*Palmer v. Vaughan*, 1818, 3 Swans. 173). So an appointment may be made where a settlement or conveyance is impeached as a fraud upon creditors pending a decision as to the validity of such settlement or conveyance. (*Harris v. Beauchamp Bros.*, 1894, 1 Q.B. p. 808). If a debtor, after executing a deed for the benefit of his creditors, fails to deal with his property according to the covenants in such deed, a receiver may be appointed to protect the property on the application of the trustee of such deed. (*Riches v. Owen*, 1868, L.R. 3 Ch. 820). Where a person is condemned in costs and dies intestate, a receiver may be appointed on the application of the person entitled to such costs, but the Court may direct that the order be not drawn up at once in

If a person who has been ordered to pay money into Court fails to do so, the Court may appoint a receiver by way of equitable execution of property belonging to such person if his whereabouts is unknown<sup>54</sup>, or if he keeps himself out of the jurisdiction<sup>55</sup>, or if for any other reason his property cannot be reached by legal process.<sup>56</sup>

The appointment of a receiver will be made almost as a matter of course in the case of an English mortgage, on the application of the mortgagee, if the interest payable under the security is in arrears. Moreover, if the property mortgaged would be in danger of being lost if left in the possession of the mortgagors, a receiver should be appointed.<sup>57</sup>

Where the mortgage-decree was for sale, and it was established that the security was not sufficient to satisfy the judgment-debt, a receiver would be appointed almost as a matter of course, specially if there had been default in the payment of interest.<sup>58</sup>

But where the mortgagee has obtained a decree for foreclosure, and no personal decree has been made, a receiver need not be appointed before the expiry of the period of grace, as the mortgagee would not be entitled at that stage to the profits of the property.<sup>59</sup>

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order to give the person entitled to take out administration and give security for the debt. [*Waddell v. Waddell*, (1892), p. 226.] The principles by which Courts are generally guided in the matter of appointment of receivers are (i) that the plaintiff must show, either that he has a clear right to the property itself, or *that he has some lien upon it*, (ii) or that the property constitutes a special fund to which he has a right to resort for the satisfaction of his claim, (iii) or it must be shown that the possession of the property by the defendant was obtained by fraud, (iv) or that the property itself or the income arising from it is in danger of loss from the neglect, waste, misconduct or insolvency of the defendant. These are believed to be the general rules governing all applications of this kind. *Mays v. Rose*, Freem. (Miss.) 705 (718); High on Receivers, S. 11, p. 19, footnote.

(54) *Stanger Leathes v. Stanger Leathes*, 1882, W.N. 71.

(55) *Re Coney*, 1885, 29 Ch. D. 993; *Re Pemberton*, 1907, W.N. 118.

(56) *Re Whiteley*, 1887, 56 L.T. 846.

(57) *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495; see also *The Eastern Mortgage Agency Co. v. Fakuruddin*, 17 C.W.N. 16=17 Ind. Cas. 849. "The mortgagee in this case not having had any payment as interest since the loan was made, was held to be entitled under the provisions of the law to apply for the appointment of a receiver pending the disposal of the suit." *The Eastern Mortgage and Agency Company, Ltd. v. Fakuruddin Mohamad Chowdhury*, 17 C.W.N. 16=17 Ind. Cas. 849.

(58) *Khubsurat Koer v. Saroda Charan Guha*, 14 C.L.J. 526 (527).

(59) *Khubsurat Koer v. Saroda Charan Guha*, 14 C.L.J. 526 (527). The following observations of Mookerjee, J., in the course of his judgment may also be noted :—"In so far

**Mortgage decree-holder being restrained by injunction from selling mortgaged property.**

Where a mortgagee after obtaining a decree on his mortgage, is restrained by an injunction from selling the mortgaged property in execution of his decree, and applies for the appointment of a receiver to collect and place the income of the property in the custody of the Court, the Court would be inclined to grant his application.<sup>60</sup>

**In testamentary suits.** No receiver should be appointed in a testamentary suit unless it is shown that there is a fair probability of the suit succeeding and that there is risk of loss or damage to the property.<sup>61</sup>

as the second contention is concerned, it has been urged that the object of the appointment of a receiver in a mortgage suit is to secure the application of the profits of the mortgaged properties for the benefit of the mortgagee. If the decree is for sale and if it is established that the security is not sufficient to satisfy the judgment-debt, a receiver will be appointed almost as a matter of course, specially if there has been default in the payment of interest. *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495; *Hopkinson v. Worcester Canal Co.*, (1868) L.R. 6 Eq. 437 (447), *Herbert v. Greene*, (1854) 3 Ir. Ch. 270, and *Hacket v. Snow*, (1847) 10 Ir. Eq. 220. But here the position is different. The mortgagee has obtained a decree for foreclosure, which does not entitle him to recover even the costs of the litigation from the mortgagors personally. Whether the decree has, in this respect, been properly drawn up or not, we are not called upon to consider. But under the decree as it now stands, the only right of the mortgagee is to foreclose the mortgagors and to take the property in lieu of his dues on his security; he is not entitled to the profits of the property. Consequently, a receiver need not be appointed at this stage, because even if a receiver were appointed, he could not apply the profits of the property for the benefit of the mortgagee. There is no suggestion that the properties are liable to be sold away in satisfaction of paramount charges. The position may be compared to that of a mortgagee who has the legal estate and can recover possession by ejectment. *Silver v. Bishop of Norwich*, (1816) 3 Swanston 115n; *Berney v. Sewell*, (1820) 1 J. & W. 648; *Sturch v. Young*, (1842) 5 Beav. 557 and *Acland v. Gravenor*, (1862) 31 Beav. 482 (484). From this point of view, the second objection of the appellant must be sustained "

(60) *Arunachellam Chettiar v. Manicka Varaher Desikar*, 6 M.L.T. 238 = 3 Ind. Cas. 437. The following observations of Munro and Abdur Rahim, JJ. in this case may also be noted:—"The appellant has been restrained by an injunction from selling the mortgaged property in execution of his decree. Now, he wants a receiver to be appointed, to be in charge of the mortgaged property and to place the income therefrom in charge of the Court, as long as the order stopping the sale of the mortgaged property continues. Now, should it be eventually found that the appellant is not entitled to sell the property, it may well be that he is entitled, in execution of his decree, to proceed against the income of the property receivable by the judgment-debtor, and the only way in which the income can be preserved would be by the appointment of a receiver. There is nothing in the appointment of a receiver for this purpose inconsistent with the injunction which has been granted, and in the circumstances of this case we think it just that a receiver should be appointed. The fact that the decree is a decree in a mortgage suit is no bar to the appointment of a receiver." (Vide *Ghanshayam Misser v. Gobinda Moni Dasi*, 7 C.W.N. 452). See 6 M.L.T. 238 = 3 Ind. Cas. 437.

(61) *Kesar Devi v. Partap Singh*, 39 P.R. 1908 = 91 P.W.R. 1908 = 185 P.L.R. 1908.

The Court will not, at the instance of one of several parties interested in an estate, displace a competent trustee or take the possession from him, unless he wilfully or ignorantly permits the property to be placed in a state of insecurity which due care or conduct would have prevented.<sup>62</sup>

The fact, however, that the only party interested is willing to incur the expense forms a strong ground for the appointment of a receiver, and this, combined with some other objection, which by itself would not justify such appointment, may induce the Court to appoint a receiver<sup>63</sup>. The fact that an executor is preferring one creditor to another<sup>64</sup>, or intends to exercise his right of retainer<sup>65</sup>, is of itself no ground for the appointment of a receiver.

But, when habitual and manifest abuse is shown on the part of the defendant executor in the management of his trust and when he is wasting and endangering the property entrusted to him, a receiver may be appointed even before answer.<sup>66</sup>

The rule of the Court of Chancery, that a receiver will not be appointed against an executor unless gross misconduct was shown, is not applicable to the case of an executor of the will of a Mahomedan<sup>67</sup>.

Where a Mahomedan testator had, by his will, appointed three executors only one of whom had acted and got possession of the estate, a suit by the testator's widow for administration of the estate was *held* sufficiently well constituted for the purpose of a motion for a receiver, although only the executor who had acted was made defendant, the other two executors not being parties to the suit.<sup>68</sup>

In an action by a vendor for specific performance of a contract for sale, where the purchase-money is unpaid and the purchaser has gone into possession, a receiver will be appointed on the application of the vendor pending a reference as to title, where the property requires expenditure and attention.<sup>69</sup> A receiver will also be appointed on the vendor's application where there is evidence that the purchaser in possession is insolvent and has tried to dispose of the property,<sup>70</sup> or is using

In suits between vendor and purchaser.

(62) *Barkley v. Lord Reay*, (1843) 2 H. p. 308.

(63) *Bainbridge v. Blair*, (1835) 4 L. J. Ch. N S. 207

(64) *Harris v. Harris*, (1887) 35 W.R. 710.

(65) *Re Wells*, (1890) 45 Ch. D. 569; *Baird v. Walker*, (1890) 35 Sol. J. 56; *Re Stevens*, (1898) 1 Ch. p. 173.

(66) *Middleton v. Dodswell*, 13 Ves. 266.

(67) *Hafizabai v. Kazi Abdul Karim*, 19 B. 83.

(68) *Ibid.*

(69) *Boehm v. Wood*, (1820) 2 J. & W. 236.

(70) *Hall v. Jenkinson*, (1813) 2 V. & B. 125.

the property in a manner which is inconsistent with its ordinary usage or contrary to the usual course of husbandry,<sup>71</sup> or is otherwise putting the property in jeopardy.<sup>72</sup> The fact that the property is partly in the possession of the vendor and partly in that of the purchaser, will not prevent the Court from so appointing.<sup>73</sup>

Collection of  
voluntary offer-  
ings (as) Fees  
paid by pilgrims  
to their priests.

A receiver will not be appointed to collect and keep in proper custody mere voluntary offerings or mere gratuity.<sup>74</sup>

Thus, in a recent case, the Calcutta High Court refused to appoint a receiver for the collection of fees which the pilgrims voluntarily paid to their priest and guide.<sup>75</sup>

Where a decree-holder had, in execution of his decree, attached decrees held by the judgment-debtor against third parties, the Court has power to appoint a receiver to realize the amounts of the attached decrees, where it appeared that, by so doing, the interests of both the decree-holder and the judgment-debtor could be better protected.<sup>76</sup>

Realization of  
amounts of  
decree under  
attachment.

(71) *Osborne v. Harvey*, (1841) 1 Y. & C. Ch. Cas. 116.

(72) *Taylor v. Eckersley*, (1876) 2 Ch. D. 302.

(73) *Hall v. Jenkinson*, (1813) 2 V. & B. 125.

(74) See *Timothy v. Day*, (1908) 2 L.R. Ir. 26.

(75) *Anund v. Ganesh*, 40 C. 678. In this case the insolvent belonged to a family of hereditary priests attached to the temple of Jagannath. He was adjudged an insolvent under Act III of 1907, and subsequently a conditional order of discharge was passed under S. 44 of the Act. Against that order an appeal was preferred to the High Court by a creditor, and the creditor also applied for the appointment of a receiver to take charge of what was described the 'pilgrim business' during the pendency of the appeal. The insolvent, as a hereditary priest, was receiving pilgrims, housing them, feeding them, looking after their comfort and accompanying them to the temple of Jagannath. For these services he was receiving from the pilgrims a fee in the nature of a voluntary payment. Held that what the priest was doing for the pilgrims cannot appropriately be described as 'business' within the meaning of Cl. (c) of S. 20, or a 'trade' within the meaning of S. 40, sub-S. (1) of the Act. *Anund Mahanti v. Ganesh Maheswar*, 40 C. 678.

(76) *Partap Singh v. The Delhi and London Bank, Ltd.*, 30 A. 393 = A.W.N. (1908) 164 = 5 A.L.J. 583. The following observations of Aikman and Karamat Husain, JJ., may also be noted :—"This is an appeal from an order of the Court below refusing the appellant's application for the appointment of a receiver. The respondent Bank, which is not represented here, held a decree against the appellant for Rs 35,000. In execution of this decree the respondent Bank attached two decrees held by the appellant, the aggregate amount of which is said to be upwards of a lakh of rupees. The Bank applied for sale of the decree. The judgment-debtor presented an application to the lower Court stating that if the decrees were sold, the result would be that both he and the Bank would be losers, and he prayed the Court to appoint a receiver to realise the amounts of his decrees attached by the Bank. The learned Subordinate Judge in his order under appeal states that the judgment-debtor's case is a pitiable one, as there is very little likelihood of the decrees fetching a suitable price at the auction sale. But he was of opinion that section 503 of the Code of Civil Procedure did not apply to a case like the present, and accordingly rejected the application. In our



Pendency of application for common manager no ground for non-appointment of receiver.

The fact that an application for the appointment of a common manager of the property in suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a receiver in a proper case.<sup>77</sup>

Probability of property fetching more by private sale than by forced sale.

A receiver cannot be appointed in respect of mortgaged property on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract.<sup>78</sup>

In a suit by some members of a community against the other members for the appointment of a receiver for the management of the joint property of the community until a proper trustee is appointed by the community, it is not convenient to pass a decree for the *appointment* of the receiver.<sup>79</sup>

Property being joint property of a community.

The proper form of the decree in such a case is one awarding possession to the plaintiff on behalf of the whole community, for whom the plaintiff sues, including the defendants in the suit.<sup>80</sup>

Mere consent of parties is no ground for the appointment, if the other circumstances of the case do not necessitate such an appointment.<sup>81</sup>

Consent of parties.

Under the practice obtaining in English Courts, where the plaintiff shows a good equitable title to the property in dispute as against which the defendant's title cannot prevail, it was held that a good ground for appointment before answer has been made.<sup>82</sup>

Grounds for appointment before answer under English practice.

opinion the opening words of the section are wide enough to cover a case like the present. We accordingly allow the appeal, set aside the order of the lower Court, and remand the case to that Court with instructions to re-admit the applications and adopt proper steps for the appointment of a receiver."

N.B.—This was a case under the Civil Procedure Code of 1882. There cannot be any doubt that the courts have the same powers under the present Code (Act V of 1908) which has greatly enlarged the powers of our Courts in the matter of the appointment of Receivers.

(77) *Jibanessa Khatun v. Majidunnessa Khatun*, 17 C.W.N. 581=18 Ind. Cas. 398. (*The Eastern Mortgage and Agency Co. v. Rakea Khatun*, 16 C.W.N. 997, followed); See the same case noted in the chapter on "Jurisdiction to appoint."

(78) *Latafut Hossein v. Anunt*, 23 C. 517.

(79) *Per Wallis and Sankaran Nair, JJ., in Narayanan Chetti v. Ramaswami Chettiar*, 4 Ind. Cas. 1069=19 M.L.J. 669.

(80) *Ibid.*

(81) *Re London Pressed Hinge Co.*, (1905) 1 Ch. p. 583.

(82) *Metcalfe v. Pulvertoft*, 1 Ves. & Bea. 180; See also chapter on "Appointment of Receiver—General Principles" and "Appointment of Receiver—Practice and Procedure."

## CHAPTER VI.

### WHO MAY BE APPOINTED.

Due care and caution to be exercised in selection of receiver—Necessity for the same.

Choice of person to be in the discretion of Court.

Discretion of lower Court rarely interfered with by the appellate Court.

Special circumstances of each particular case to be considered—Value of precedents.

Appointment by consent.

Right to propose a proper person for the receivership.

English practice—Reference to the Master.

Appointment of the person proposed by the applicant.

Qualifications required for receivership.

- (i) Impartiality.
- (ii) Competency.
- (iii) Duties should not conflict with self-interest.
- (iv) Duty to check receiver's accounts—A disqualification.
- (v) Capacity to manage business.
- (vi) Proposed person should have the necessary time and leisure to attend to his duties as receiver.
- (vii) Residence near the property necessary.
- (viii) Person proposed for receivership of a business having a similar business of his own.

Particular persons competent to be appointed for the receivership.

(i) Parties to suit not generally appointed.

But under special circumstances party may be appointed, as,

- (a) Consent of all parties concerned.
- (b) Special capacity to manage business being found only in a party.
- (c) One of the parties consenting to act as receiver without remuneration.
- (d) Where estate is small and cannot afford to have a paid receiver.
- (e) One of the parties having a large preponderating interest in the property.
- (f) Imminent danger to the property.
- (g) Equitable execution.
- (h) Where defendant is in possession of the property and he is otherwise a desirable person for receivership.
- (i) Where appointment of a party would otherwise be beneficial to the estate.
- (j) When party appointed receiver no remuneration generally allowed to him.
- (k) A party to suit may be appointed though there are great disputes and differences between the parties.
- (l) Party appointed receiver does not lose his privileges as a party.

(ii) Person, not a party to suit, but whose interests are mixed up with the subject-matter of the suit.

Not appointed as a general rule.

Exceptional cases in which such appointment could be made.

- (iii) Persons who are related to one or other of the parties to the suit.
- (iv) Person who is a friend of one or other of the parties.
- (v) Person who has taken sides with some one or other of the parties to the litigation.
- (vi) Person residing at a great distance from the property to be managed.
- (vii) Solicitor.
- (viii) Law partner of the solicitor.
- (viii-a) Counsel.
- (ix) Barrister.
- (x) Attorneys of the parties.
- (xi) Vakil of High Court.
- (xii) Collector.
- (xii-a) Bailiff.
- (xiii) Clerk of the Court.
- (xiv) Master in Chancery.
- (xv) Person whose official duty would be to watch receiver.
- (xvi) Person who has given security to Crown (as) Accountant to Crown.
- (xvii) Person in the position of Accountant to Crown.
- (xviii) Person who would not be subject to the ordinary process of the Court.

Examples.—

- (a) Peer.
- (b) Member of the House of Commons.
- (xix) Trustee or executor.
- (xx) Other persons in fiduciary relationship.

Examples—

- (a) Next friend of a minor.
- (b) Son of the next friend.
- (c) Guardian of an infant.
- (d) Solicitor of a party having conduct of the suit.

Reason of the rule in the above cases.

- (xxi) Administrator.
- (xxii) Mortgagee.
- (xxiii) Person having a lien on the property.

Example—Unpaid vendor.

- (xxiv) Tenant for life.
- (xxv) Creditor of insolvent.
- (xxvi) Receiver of debtor is ineligible as his assignee in bankruptcy.
- (xxvii) Person whose appointment will cause difficulty in the administration of justice.
- (xxviii) Liquidator.
- (xxix) Official Receiver.
- (xxx) Receiver—General of a County.
- (xxxi) Director and Secretary of a Railway Company.
- (xxxii) Officer of Corporation.
- (xxxiii) One Corporation may be receiver of another Corporation.

Power of Court to consult with parties or counsel.

Practice as to objection to the eligibility of a proposed person for receivership.

WE have already seen that a receiver is an impartial person appointed

Due care and caution to be exercised in selection of receiver—Necessity for the same.

ed by the Court to be its own officer and representative for the purpose of collecting and receiving the rents and profits of the property which is the subject of a pending litigation, and sometimes also for assuming the management and control of the property or fund in controversy in the suit. Hence it follows that the Courts ought to attach considerable importance as to the person whom it selects to be the receiver.

It may sometimes happen that the person appointed is one that is likely to favour one party as against the other. In such a case irreparable damage may be caused to the party to whose interests the receiver is opposed. Or, again, the duties of receiver may involve the management of large mercantile concerns. If, owing to haste or inadvertence, some inexperienced and some incompetent person be appointed as receiver, it may lead to the most disastrous results to the parties interested. In such cases the Court would be lending itself to be made the unconscious instrument of injustice at the instance of unscrupulous litigants. Hence it is, that the Courts pay the greatest attention to the selection of a proper person to act as receiver.

One of the most primary considerations for the Court is to see that the person appointed will act impartially and for the equal benefit of all the parties. It looks to his honesty, and also to his solvency. It also takes care to see that he is competent to manage the trust that is to be entrusted to his care as receiver.<sup>1</sup> In considering these and similar qualifications of the proposed receiver, and in weighing the respective qualifications of several different persons proposed for the receivership, the Court has to exercise a sound and proper discretion.

Choice of person to be in the discretion of the Court.

Thus, one of the settled principles regarding the choice of a proper person for the receivership, is that it is to be entrusted to the sound discretion of the

Court to which the application is made, having regard to all the circumstances of the case.<sup>2</sup> Just as the right to grant or refuse a receivership is a matter of judicial discretion, so also the selection of the person for the receivership is equally a matter of such discretion.<sup>3</sup>

(1) The person appointed to be receiver ought to be one who, consistently with his professional and other pursuits, can spare sufficient time for the duties of his office, and the Court will attend to circumstances tending to show that the person appointed as receiver is unable to fulfil this condition. *Wyann v. Lord Newborough*, 15 Ves. 284. See also *Kerr on Receivers*, 6th Ed., 1912, p. 141.

(2) *Sidheswari Dabi v. Abhoyeswari*, 15 C. 818; *Jijai Amba, ex parte*, 13 M. 390 = 5 Sar. 584 (P.C.); *Weatherall v. Eastern Mortgage Agency Co.*, 13 C.L.J. 495.

(3) *Perry v. Oriental Hotels Co.*, L.R. 5 Ch. App. 420; *Cookes v. Cookes*, 2 De. G.J. & S. 526. See also *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974 = 19 Ind. Cas. 873.

Just as in all other matters which are purely of a discretionary nature, so in the choice of a proper person for the receivership, the appellate Court rarely interferes with the decision of the original Court.<sup>4</sup> In fact, unless there is some overwhelming objection in point of propriety, or some fatal objection in point of principle, to the person selected, the appellate Court will not be induced to set aside the order of the lower Court.<sup>5</sup>

If, however the objection as to the competency of the person appointed affects a matter of principle and not merely of expediency, a Court of appeal or of revision will sometimes interfere and reverse the order of the Court below.<sup>6</sup>

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(4) *Cookes v. Cookes*, 2 De. G. J. & S. 526; see *Raja Ram v. Thakurain*, 7 Ind. Cas. 344 (346), where it was held that the burden of showing that the selection of the receiver by the lower Court was improper or that the lower Court exercised its discretion improperly was on the appellant. See also *Sivagnanathammal v. Arunachalam*, 21 M.L.J. 821 (822) = 2 M.W.N. 75 = 11 Ind. Cas. 870 = 10 M.L.T. 490.

(5) *Ibid.* In *Bowersbank v. Colasseau*, 4 Ves. 164, Lord Anvanley states that the judgment of the master is to be disturbed only upon special grounds, and that a strong case ought to be shown that the "person appointed ought not to be receiver, and the Court will not enter comparisons." The following observations of Mookerjee, J. may also be noted:—"The selection and appointment of a particular person as receiver is a matter of judicial discretion, to be determined by the Court according to the circumstances of the case, and the exercise of this, like other matters of judicial discretion, will rarely be interfered with by an Appellate tribunal, (*Perry v. Oriental Hotels Co.*, (1870) L.R. 5 Ch. App. 420) or, as has been sometimes said, to induce an Appellate Court to interfere with the decision of an inferior tribunal in the selection of a receiver, it is necessary to show some overwhelming objection in point of propriety or some fatal objection in principle, to the person named. (*Cookes v. Cookes*, (1865) 2 De. G.J. and S. 526.) As will presently be shown, the case before us falls within this exception, and the order of the Court below must be discharged in the interest of the infant." *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974 at p. 975 = 19 Ind. Cas. 873.

(6) *Perry v. Oriental Hotels Co.*, L.R. 5 Ch. App. 420.

Where amongst two rival claimants for appointment as guardian of a minor's property, the appointment of one by a District Judge was set aside on the ground of irregularities and the District Judge was asked to reconsider the matter, and the District Judge, pending trial, appointed the same individual receiver under sub-S. (1) of S. 12 of the Guardians and Wards Act, although he was a resident outside the Judge's jurisdiction and no security was taken from him:—*Held*, in revision, that the appointment was bad and should be set aside, *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974 = 19 Ind. Cas. 873.

The following observations of Mookerjee, J., in the course of judgment setting aside the order of appointment of the lower Court, may also be noted. His Lordship said: "In the first place, as was observed by Sir George Jessel in the case of *In re Lloyd*, (1879) 12 Ch. D. 447 (451), it is a settled rule that one of the parties to a cause shall not be appointed Receiver without the consent of the other party unless a very special case is made, (*Sargeant v. Read*, 1876, 1 Ch. D. 600; *Budgett v. Improved, etc., Syndicata*, (1901) W.N. 23. In the present case, the person selected for appointment as Receiver is interested in the matter before the Court, he is one of the rival claimants to the office of guardian of the property of the infant. What is more, he was appointed guardian but that order has been set



From what has been stated above, it would be clear, that, in the matter of selection of a receiver in any particular case, the special circumstances of each case are to be considered; and little help can be derived from the decisions in other cases. Each case must be judged for itself. But there are some dicta and decisions on the subject, which may be referred to, more for the purpose of general guidance, than as fixed rules of law or settled principles.<sup>7</sup>

Where the parties are agreed as to the person to be appointed, the Court may make the appointment without much enquiry.<sup>8</sup>

The reason of this rule is that both the parties may be expected to look to their mutual benefit and would choose a proper person who would be competent for the task, and who would look equally and impartially to the benefit of both the parties.

But the Court is not bound to appoint the person proposed by the parties, if such person does not appear to the Court to be a proper person.<sup>9</sup>

The right to propose a proper person for the receivership rests, in the first instance, with the parties interested in the suit.<sup>10</sup> The object of appointing a receiver being the proper preservation of the property pending the suit, no person other than those interested in the same can be expected to suggest the best and most competent persons for the office. In fact, all *bona fide* representations of the parties, regarding the qualifications of the persons suggested for the receivership, are entitled to great consideration at the hands of the Court.<sup>11</sup>

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aside by this Court. The effect of his appointment as receiver is to restore him forthwith to the position which he occupied under the order which has been cancelled by this Court." *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873.

(7) In an English case, when a rule of law laid down in another case as to the eligibility of a particular person for the receivership was pressed on him, Vaughan Williams, J., is reported to have said:—This, however, is "only a *prima facie* rule of practice; if justice or convenience require it, the rule will be displaced." *British Linen Co. v. South American and Mexican Co.*, (1894) 1 Ch. 108, *per* Vaughan Williams, J., p. 119; *Barlett v. Northumberland Avenue Hotel Co.*, 53 L.T. 611. See Kerr on Receivers, 6th Ed., 1912, p. 144.

(8) *In re Llewellyn Lane v. Lale*, 1883, 25 Ch. D. 66; *Tillet v. Nixon*, 1883, 25 Ch. D. 238. In England, if the parties do not consent, the usual practice is to refer the matter to Chambers for the appointment of some fit and proper person. See *In re Llewellyn Lane v. Lane*, 1883, 25 Ch. D. 66; *Encyclopædia of the Laws of England*, 2nd Ed., vol. XII. p. 388—Heading—"Receiver."

(9) *Re London Pressed Hinge Co. Ltd.*, (1905) 1 Ch. p. 583.

(10) *Att. Gen. v. Day*, (1817) 2 Madd. 246; *Bord v. Tollenache*, (1862) 1 New. Rep. 177,

(11) *Ibid.*

A stranger has no right to propose a person for the receivership.<sup>12</sup>

Reasonable time is to be given to the interested parties to suggest persons whom they think proper. Even where they fail to propose a proper person in the first instance, the Court<sup>13</sup> should not appoint one of its own accord, at any rate, until a further reasonable time has been given to such parties to make the proposal.<sup>14</sup>

The person most competent to the office considering all the circumstances of the case should be appointed without regard to who may propose or recommend him.<sup>15</sup>

Under the practice obtaining in the Courts in England a receiver may be appointed by the judge in Court or in Chambers<sup>16</sup>; or it may be referred to the Master to appoint a fit and proper person. Where the Master makes an appointment, the Court will not disturb his choice unless there is some substantial objection in point of propriety of choice, or there is some other substantial objection in point of principle, to induce the Court to set aside the appointment made by the Master.<sup>17</sup>

English practice — Reference to the Master.

Appointment of the person proposed by the applicant.

When an application prays not only for the appointment of a receiver, but also for the appointment of a particular person as receiver, and the Court, in the exercise of its discretion, deems it fit to appoint such a person, it does not necessarily follow that he was appointed solely because his appointment was asked for by the applicant. In such a case the proper presumption would be that the Court exercised its own judgment in the matter and made its own selection. Such an appointment will not lightly be interfered with by a Court of appeal.<sup>18</sup>

(12) *Att.-Gen. v. Day*, (1817) 2 Madd. 246; *Board v. Tollenache*, (1862) 1 New. Rep. 177.

(13) Or under the English practice, the Master.

(14) *Att-General v. Day* (1817), 2 Madd. 246.

(15) *Lespinasse v. Ball*, 1821, 2 Jac. & W. 436.

(16) *Lane v. Lane*, (1883) 25 Ch. D. 66.

(17) *Att-General v. Day*, (1817), 2 Madd. 246; *Bord v. Tollemache*, (1862) 1 New. Rep. 177; *Thames v. Dawkin*, (1792) 1 Ves. Jun. 452; *Bowersbank v. Volasseau*, (1796) 3 Ves. 164; *Tharpe v. Tharpe*, (1806) 12 Ves. 317; *Wyanne v. Lord Newborough*, (1808) 15 Ves. 283; *Lupton v. Stephenson*, (1848) 11 Ir. Eq. Rep. 352; *Cookes v. Cookes*, (1865) 2 D. J. & S. 526. In *Tharpe v. Tharpe*, 12 Ves. 317, upon exceptions to the master's report as to the appointment, Lord Erskine observed, p. 319, as follows: "The cases cited are built upon principles that are not peculiar to this Court. All Courts place a degree of discretion in officers appointed for the management of concerns full of detail and complicated circumstances; and those who impeach the judgment of those officers upon such points must show a reason for the exception."

(18) *Johns v. Johns*, 23 Ga. 31. The practice of the Irish Chancery Court is not to appoint as receiver a particular person whose appointment is asked for by the applicant or to whose appointment the parties consent. *Leach v. Tisdal*, 4 Ir. Ch. N. S. 209, noted in *High on Receivers*, footnote to p. 106.

Qualifications required for receivership.

- (i). Impartiality,
- (ii). Competency.

The most primary qualifications required for a receiver are, as we have seen, absolute impartiality,<sup>19</sup> and competency to perform the duties that would be cast upon him.<sup>20</sup>

(iii) Duties should not conflict with self-interest.

Next to these, care should be taken to see that the interests of the person appointed do not conflict with his duties as receiver. If in any case, there be a tendency towards such a conflict, such a person is not a proper person for the receivership.<sup>21</sup>

(iv) Duty to check receiver's accounts.—A disqualification.

So, also, a person whose duty would be to check the receiver's accounts is not a proper person to be appointed.<sup>22</sup>

The Court would also see that the person to be appointed is himself

(v) Capacity to manage business.

competent to manage the business of the receivership.<sup>23</sup> Thus, where the names of two persons are proposed, and one of whom is found to be capable of acting on his own account and responsibility, and the other could only act on the advice of another person, the former would as a rule be preferred.<sup>24</sup>

(vi.) Proposed person should have the necessary time and leisure to attend to his duties as receiver.

The next point for consideration is to see whether the proposed person can command the necessary time and leisure, consistent with his own professional and other duties, for attending to the business of receivership.<sup>25</sup>

(19) *Williamson v. Wilson*, 1 Bland, 418. In this case where the person appointed was the brother of one of the parties to the action and the son of one claiming to be a large creditor, and was admitted by the plaintiff to have taken an active part in the controversy as his friend and agent, he was regarded as too much enlisted in the cause to permit him to be as unbiased and impartial as a receiver should be, and was therefore removed. A receiver should be an impartial person and wholly disinterested in the subject-matter of the suit. See *Jibanessa v. Majidunnessa*, 17 C.W.N. 581 (584)=18 Ind. Cas. 398.

(20) *Lupton v. Stephenson*, (1848), 11 Ir. Eq. Rep. 484; see also the observations of Mookerjee, J., in *Kali Kumari v. Bachhan*, 17 C.W.N. 974=19 Ind. Cas. 873.

(21) *Fripp v. The Chard Railway Co.*, (1853) 11 Hare. 241. But see also *Cookes v. Cookes*, (1865) 2 D.J. & S. 526.

(22) *Garland v. Garland*, (1793), 2 Ves. Jun. 137; *Anon* (1797) 3 Ves. 575; *Re Lloyd*, (1897) 12 Ch. D. 447.

(23) *Lupton v. Stephenson*, (1848) 11 Ir. Eq. Rep. 484.

(24) *Ibid.* It is improper to appoint as receiver over a particular kind of property a person who is entirely unfamiliar therewith, even though he gives an undertaking to attend to the directions of another person familiar with the management of the property, since it is always preferable that the receiver appointed should act upon his own responsibility. *Lupton v. Stephenson*, 11 Ir. Eq. 484. See also High on Receivers, S. 68, p. 96.

(25) *Wynne v. Lord Newborough*, (1808), 15 Ves. 283.

If it appears that it is not possible for the proposed person to give the requisite attention to the receivership, the Court would deem it as a matter to be considered, though it will not be taken as an absolute disqualification.<sup>26</sup>

It is also necessary to see that the proposed receiver resides in the neighbourhood of the property over which the appointment is made. This residence would be insisted upon more in the case of a manager than in that of a receiver.<sup>27</sup>

(vii) Residence near the property desirable.

The nature of the property which the receiver would be required to take possession of, whether it would be necessary for him to exercise constant control over it or not, these considerations also would influence the Court in determining whether it should insist on this qualification as to residence in the neighbourhood or not.<sup>28</sup>

Residence at a great distance from the property which is to be subject to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration.<sup>29</sup>

Residence beyond jurisdiction is not by itself a fatal objection, but when a non-resident is appointed receiver, there must be adequate guarantee that he will be subject to the effective control of the Court.<sup>30</sup>

(viii) Person proposed for receivership of a business having similar business of his own.

The mere fact that the person proposed for the receivership or the managership has a similar business of his own is generally no disqualification.<sup>31</sup>

But if the two businesses are likely to compete with each other, and thus lead to a conflict between the duties and interest of the proposed receiver, the Court would be exercising a sound discretion in refusing to appoint such a person.<sup>32</sup>

(26) *Wynne v. Lord Newborough*, (1808) 15 Ves. 283.

(27) *Tharpe v. Tharpe*, 1806, 12 Ves. 317; *Wynne v. Lord Newborough*, 1808, 15 Ves. 283; *Re Carshalton Part Estate, Ltd.*, 1908, 2 Ch. p. 68. For the difference between a "Manager" and a "Receiver" see Chap. I *supra*.

(28) *Ibid.*

(29) *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873. See also *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638 (641-642).

(30) *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873.

(31) *Re Irish*, 1888, 40 Ch. D. p. 51.

(32) So Swinfen Eady, J., in an unreported case, refused to appoint a person as receiver or manager of the income of a business where he himself had a similar business, which actually competed with such business. *Re Cealine, Ltd.*, 21st December, 1911.

Particular persons competent to be appointed for the receivership.

(i) Parties to suit not generally appointed.

But under special circumstances party may be appointed.

As a general rule and except under special circumstances, the Court will prefer a stranger rather than one of the parties to the suit.<sup>33</sup> But there can be no doubt, that a Court has jurisdiction to appoint a party as receiver under special circumstances.<sup>34</sup>

One of the grounds on which a party is occasionally appointed receiver is that all the parties interested in the subject-

(as)

(a) Consent of all parties concerned.

matter of the suit consent to such appointment.<sup>35</sup>

The reason of this rule is that the object of the appointment of a receiver being the preservation of the property pending suit, the party in whom all the persons interested have confidence, and to whose care they desire the property should be entrusted may generally be presumed to be a proper and competent person for the office.

Or again the circumstances of the case may be such that the receiver

(b) Special capacity to manage business being found only in a party.

would be required to carry on a large business concern, and the special capacity to carry it on successfully and profitably may be found only in a party to the suit. In such cases the Court will appoint such a

person, though a party to the suit, to act as receiver.<sup>36</sup>

Thus, where in a suit for dissolution of a partnership it was found that one of the parties had been in effect the managing partner, and the nature of the business was a personal one, and such that an indifferent person could not be found to carry it on effectively, such party would be appointed receiver, though his appointment be opposed by the other parties.<sup>37</sup>

(33) See *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873; *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638 (641-642)=18 C.W.N. 533=22 Ind. Cas. 601; *In re Thayyanayaki Achi*, 25 Ind. Cas. 602.

(34) *Thayyanayaki Achi, In re.*, 25 Ind. Cas. 602; *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873.

(35) See *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873; *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638 (641-642)=18 C.W.N. 533=22 Ind. Cas. 601.

(36) *Sargant v. Read*, (1876) 1 Ch. D. 600.

(37) *Sargant v. Read*, (1876) 1 Ch. D. 600. See also *Collins v. Barker*, (1893) 1



(c) One of the parties consenting to act as receiver without remuneration. The fact that one of the parties consents to act as receiver without remuneration, and also submits to such conditions as to security and payment of collections into Court as the Court may deem fit to impose may sometimes lead the Court to appoint a party in preference to a stranger.<sup>38</sup>

(d) Where estate is small and cannot afford to have a paid receiver. So also, where the estate is small and cannot afford to have a paid receiver, the Court would be justified in appointing one of the parties as receiver without remuneration, even without the consent of the other parties.<sup>39</sup> Otherwise the very object of the appointment, which is the saving of the property for the rightful owners would be frustrated. For the appointment of a paid stranger in such a case would only mean the preservation of the property from the wrong-doer to be delivered to the receiver.

(e) One of the parties having a large preponderating interest in the property. Similarly the fact that one of the parties possesses a very large and preponderating interest in the property which is the subject of the suit and which is in jeopardy may sometimes lead the Court, to appoint such a person as receiver.<sup>40</sup>

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(38) See *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638 at pp. 641-642.

The following observations of Mookerjee, J., in the above case, may also be noted, as clearly explaining the law on this point :—

“ The next question for consideration is, who should be appointed receiver. As pointed out by this Court in the case of *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974, one of the parties to a litigation should not ordinarily be appointed a receiver and very exceptional circumstances must be established to justify the appointment of a party as receiver. In our opinion, in the present case such grounds have been made out. The appointment of a stranger would mean the imposition of a heavy burden upon the estate which is already encumbered ; and it might also tend to dislocate the management. The defendant, on the other hand, has offered to accept the appointment as receiver if the Court decides that a receiver should be appointed. He has further agreed to bring into Court Rs. 10,000 within two weeks from this date, for payment to the plaintiff ; he has also consented to bring into Court Rs. 10,000 a year in four equal instalments for payment to the plaintiff. In view of the offers thus made, we are of opinion that the defendant may very well be appointed receiver. We accordingly appoint him receiver with effect from this date. His share of the joint estate in controversy will remain as security for the due performance of his duties as receiver.” *Per Mookerjee, J., in Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638 at pp. 641, 642.

(39) *In re Thayyanayaki Achi*, 25 Ind. Cas. 602.

(40) *Hoffman v. Duncan*, (1853) 18 Jur. 69 ; *Boyle v. Bettws Llantwit Colliery Co.* (1876), 2 Ch. D. 726.

Again where there is immediate danger to the property and there is not sufficient time for the Court to make the necessary enquiry as to the proper person, the plaintiff himself may be appointed receiver.<sup>41</sup>

(f) **Imminent danger to the property.**

Such orders are generally made when the plaintiff makes an urgent motion for an *ex parte* order of appointment alleging special grounds for the same. In such cases the order of appointment is made for a definite period only, or until another person is appointed after due enquiry and after hearing all the parties in interest.<sup>42</sup>

So, also, where a receiver is applied for by way of equitable execution, and the debt is small the plaintiff or judgment-creditor is generally appointed receiver, if he consents to act without remuneration, the object being the saving or minimising of expense to the estate.<sup>43</sup>

(g) **Equitable execution.**

(h) **Where defendant is in possession of the property and he is otherwise a desirable person for receivership.**

A defendant himself may be appointed when it is found that he is already in possession of the estate in controversy, and is otherwise a fit and competent person for its management, and no cause is shown against his appointment.<sup>44</sup>

(i) **Where appointment of a party would otherwise be beneficial to the estate.**

As a general rule, wherever the Court finds that the appointment of a party would be immensely more advantageous to the estate than the appointment of a stranger, it would be open and competent to the Court to appoint such party as receiver.<sup>45</sup>

(j) **When party appointed receiver no remuneration generally allowed to him**

Where a party to the action is appointed receiver he will not usually be allowed any remuneration.<sup>46</sup> But in partnership cases or in other cases where there would be a necessity to use special skill and business capacity, he is sometimes allowed remuneration.<sup>47</sup>

(41) *Taylor v. Eckersley*, 2 Ch. D. 302; *Chaplin v. Young*, (1862) 6 L.T.N.S. 97; *Hyde v. Warden*, 1 Exch. D. 309; *Fuggle v. Bland*, 11 Q.B.D. 711.

(42) *Ibid.*

(43) See Annual Practice, 1912, Notes to O.L., r. 16, p. 826; *Pawley v. Pawley*, (1905) 1 Ch. 593.

(44) *Robinson v. Taylor*, 42 Fed. 803; See *Suprasanna Roy v. Upendra Narain*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(45) See *Sargant v. Read*, 1 Ch. D. 600; *Collins v. Barkar*, (1893) 1 Ch. 578; Kerr on Receivers, 6th Ed., pp. 536-137; See *Suprasanna Roy v. Upendra Narain*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(46) *Wilson v. Greenwood*, 1 Sw. 471, 483; *Blakeney v. Gufaur*, 15 Beav. 40, 44; *Hoffman v. Duncan*, 18 Jur. 69; *Sargant v. Read*, 1 Ch. D. 600; *Re Prytherch*, 42 Ch. D. 590.

(47) See *Davy v. Scarth*, (1906) 1 Ch. 55.

(1906) 1 Ch. 55.

(k) A party to suit may be appointed though there are great disputes and differences between the parties.

(l) Party appointed receiver does not lose his privileges as a party.

The mere fact of the existence of great disputes and differences between the parties to the suit and that one of such parties has been appointed receiver is not good ground for reversing the appointment made by the first Court,<sup>48</sup> if, in other respects, it is not open to objection.

A party whom the Court has thought fit to appoint as receiver does not lose any rights which he may possess as a party.<sup>49</sup>

For the same reasons for which the Courts are averse to appointing

(ii) Person, not a party to suit, but whose interests are mixed up with the subject-matter of the suit.

Not appointed as a general rule.

a party to the suit as receiver, except in very special circumstances, they are generally unwilling to appoint a person as receiver, who, though not actually a party, yet has an interest in the subject-matter of the suit. Acting on the principle that a receiver should be wholly disinterested in the subject-matter, Judges avoid as far as possible appointing a person as receiver

whose interests are mixed up with the property involved in the action.<sup>50</sup>

As in the case of the party to the suit, a person who is interested in

Exceptional cases in which such appointment could be made.

the subject-matter may be appointed under special circumstances; and the grounds on which such exceptional appointment can be made are similar to those on which the party to an action is appointed receiver.

And the rules and principles laid down with regard to the appointment of a party apply in a more or less modified form to the appointment of a stranger interested in the subject-matter.

(48) *Cookes v. Cookes*, 2 De. G.J. & S. 526. See also *High on Receivers*, S. 65, p. 94 and Note.

In *Cookes v. Cookes*, 2 De G. J. & S. 526, Lord Justice Turner observes as follows, p. 531: "Two points have been urged in support of this appeal as questions of principle. First, it is said that there are great disputes and differences in this family, and that it is not for the interest of the estate that this gentleman should be appointed receiver. But if the existence of differences and disputes is to be considered as a question of principle affecting the appointment of a receiver, it is obvious that there could hardly be any case in which it would not be competent to the parties to come here, by way of appeal from the appointment of a receiver; for in cases where receivers are appointed it is almost always in consequence of the differences and disputes between the parties. I think, therefore, that the differences between these parties, unfortunate as they are, furnish no ground, whatever for this application."

(49) See *Scott v. Platel*, 2 Ph. 229 (230). See also *Jibanessa Khatun v. Majidunnessa*, 17 C.W.N. 581 (584)=18 Ind. Cas. 393.

(50) See *Daniell's Chancery Practice*, 7th Ed., 1901, p. 1427. *Jibanessa v. Majidunnessa*, 17 C.W.N. 581 (584)=18 Ind. Cas. 393.

Thus, consent of all the parties in interest,<sup>51</sup> benefit to the estate,<sup>52</sup> such stranger possessing a large and preponderating interest in the subject-matter<sup>53</sup>, such person consenting to act without remuneration<sup>54</sup>, are some of the considerations that may induce the Court to appoint a person interested in the subject as receiver.<sup>55</sup>

The same grounds that influence the Court to avoid as far as possible a party to the suit, or a person having his interests mixed up with the subject-matter of the suit being appointed a receiver also apply to some extent to the case of the relatives of one or other parties of the suit. Although such relationship is not an absolute disqualification, yet, in connection with other circumstances it may weigh with the Court and lead to the rejection of the claims of such a person for the receivership.<sup>56</sup>

(iii) Persons who are related to one or other of the parties to the suit.

Similarly a person who is admittedly a special friend of the plaintiff or defendant would be avoided as far as possible.<sup>57</sup>

(iv) Person who is a friend of one or other of the parties.

So also a person who has taken an active part in the controversy as the friend and agent of one of the parties to the suit, would be regarded as too much enlisted in the cause to permit him to be unbiased and impartial, as a receiver should be.<sup>58</sup>

(v) Person who has taken sides with some one or other of the parties to the litigation.

On the same ground, it has been held that it is highly objectionable to appoint as receiver a person who is in the interest of the defendant against whom the appointment is sought to be made.<sup>59</sup>

(51) *Re Golding*, 21 L.R. Ir. 194.

(52) *Re Prytherch*, 42 Ch. D. 590. In this case a mortgagee in possession was appointed receiver.

(53) *Hoffman v. Duncan*, 18 Jur. 69. In this case, a retired partner, who had advanced all the capital for the business and was also liable for the debts of the partnership was appointed receiver.

(54) *Re Golding*, 21 L.R. Ir. 194. In this case, the owner of an encumbered estate which had been directed to be sold was appointed receiver on the consent of the encumbrancers, and on his consenting to act without any remuneration.

(55) See Kerr on Receivers, 6th Ed., 1912, pp. 136, 137; Daniell's Chancery Practice, 7th Ed., pp. 1427-1429.

(56) See *Williamson v. Wilson*, 1 Bland 418. In this case, the appointment of a brother of one of the parties to the suit and the son of one claiming to be a large creditor was held improper. See also High on Receivers, S. 67, p. 95.

(57) See *Williamson v. Wilson*, 1 Bland 418.

(58) *Ibid.*

(59) See *Lupton v. Stephenson*, 11 Ir. Eq. 484.

The fact of the proposed receiver resides at a great distance from the estate or property which he may have to manage, though not regarded as an absolute disqualification for the office, is a circumstance which should be taken into consideration in making the appointment.<sup>60</sup>

(vi) Person residing at a great distance from the property to be managed.

A solicitor not concerned in the litigation may be appointed receiver; but, after appointment it is not proper for him to act as solicitor in any proceedings which it may be necessary for him to take as receiver.<sup>61</sup> Nor will it be proper for him afterwards to act as solicitor to any party.<sup>62</sup>

(vii) Solicitor.

A solicitor to a party in a suit will not be appointed.<sup>63</sup> Nor will a solicitor in a cause acting for all the parties be a proper person.<sup>64</sup> So

(60) *Wynne v. Lord Newborough*, 15 Ves. 283. See also *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873; *Tharpe v. Tharpe*, (1906) 2 Ves. 317; *Wynne v. Lord Newborough*, (1808) 15 Ves. 238; *Re Carshalton Park Estate Ltd.*, (1908) 2 Ch. 68.

Residence beyond jurisdiction is not by itself a fatal objection, but when a non-resident is appointed receiver, there must be adequate guarantee that he will be subject to the effective control of the Court. *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974=19 Ind. Cas. 873.

Residence at a great distance from the property which is to be subject to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration. (*Ibid*).

The following observations of Mookerjee, J., may also be noted :—"His Lordship says :—"The receiver in this case resides ordinarily at a place far beyond the local limits of the jurisdiction of the Court: and as he has not been called upon to furnish any security, much less tangible security, within the jurisdiction of the Court, the Court will have practically no control over him in the event of default. Residence beyond jurisdiction is not by itself a fatal objection, but where a non-resident is appointed receiver there must be adequate guarantee that he will be subject to the effective control of the Court. Similar observations apply to the question of eligibility as affected by distant residence. The fact that the Receiver chosen resides at a great distance from the property which is to be subjected to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration (*Tharpe v. Tharpe*, (1806) 12 Ves. 317; *Wynne v. Lord Newborough*, (1808) 15 Ves. 283, *In re Carshalton Park Estate*, (1908) 2 Ch. 62, 68. In the case before us the person selected resides at Gorakhpur in the United Provinces, and if his appointment stands, the estate of the infant in Bhagalpur will practically be in the charge of other people. It has not been disputed that from such distance constant and regular supervision is extremely difficult, if not impossible." Per Mookerjee, J., in *Kali Kumari v. Bachhan Singh*, 17 C.W.N. 974 at pp. 975, 976=19 Ind. Cas. 873.

(61) *Wilson v. Poe*, 1 Hog. 332.

(62) *Re Lloyd*, 1897, 2 Ch. D. 447.

(63) *Ibid*. See also Wharton's Law Lexicon, 11th Ed., 1911, p. 717. In *Baker v. Administrator of Backus*, 32 Ill. 79, the Court said p. 112: "There was no necessity to appoint a receiver, because no fraud is alleged or shown, and no sufficient proof that such a step was necessary to save the property from material injury, or rescue it from impending destruction. And there was a fatal objection to the person appointed receiver. He was not disinterested; he was the legal adviser of the complainant, and framed the bill; he was the legal adviser of the company; he was the largest single creditor; all these disqualified him, and he should not have been appointed."

(64) *Garland v. Garland*, 1793, 2 Ves. Jun. 137.



also, a solicitor under a commission of lunacy should not be appointed receiver of the lunatic's estate.<sup>65</sup>

The law partner of a solicitor in the suit is also not a desirable person for the receivership because such partner would be presumed to be as much interested in the proceedings as the solicitor himself.<sup>66</sup>

So also is any person who is counsel, or connected with the firm of the counsel, for either party, not a proper person to be appointed receiver.<sup>67</sup>

There is no objection for a barrister by himself to be appointed for the receivership.<sup>68</sup> But where the estate to be managed is distant from the place where the barrister is to practise, that would be considered as a drawback.<sup>69</sup>

It is not regarded as an abuse of judicial discretion to appoint as receivers the attorneys of the respective parties to the cause, and the action of the Court in making the appointment will not be interfered with on appeal.<sup>70</sup>

There is no objection to a High Court Vakil as such being appointed for the receivership.<sup>71</sup>

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of

(65) *Ex parte Pindle*, 2 Meriv. 452; High on Receivers, S. 70, p. 98.

(66) *Merchants and Manufacturer's National Bank v. Kent Circuit Judge*, 43 Mich. 292.

(67) *State Trust Co. v. National, L.I. & M. Co.*, 72 Fed. 575.

(68) *Garland v. Garland*, 2 Ves. Jun. 137. *Wynne v. Lord Newborough*, (1808) 14 Ves. 283. Wharton's Law Lexicon, 11th Ed., 1911, p. 717.

(69) *Ibid*; Riviere's Law of Receivers, 1912, p. 15. See also *Ramji Ram v. Saligram*, 14 C.W.N. 248 (251)=5 Ind. Cas. 96.

(70) *Shannon v. Hanks*, 88 Va. 338.

(71) See *Ramji Ram v. Saligram*, 14 C.W.N. 248 (251)=5 Ind. Cas. 96.

The following observations of Holmwood and Chatterjee in the above case may also be noted:—"There are certain subsidiary objections taken by learned Counsel for the Appellants with which we must briefly deal. One of these is that the appointment of two learned vakils of the Court as receivers where a large banking business has to be carried on is not an arrangement that can be supported either on the grounds of justice or convenience. But we find from the record and pleadings of the parties that this business even if it has not been formally wound up is in complete abeyance and that the receivers will have nothing to do with the management of it." Per Holmwood and Chatterjee, JJ., in *Ramji Ram v. Saligram*, 14 C.W.N. 248 (251)=5 Ind. Cas. 96.

N.B.—Under such circumstances the appointment of vakils as receivers was upheld.

those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.<sup>72</sup>

The appointment of a bailiff to act as receiver is not generally proper, especially when he is not in a position to furnish the necessary security, and when the receivership would materially interfere with his duties as bailiff.<sup>73</sup>

Similarly it would be improper to appoint the clerk of the Court to act as receiver.<sup>74</sup> Nor can a clerk of the Court be, by virtue of his office, considered as a receiver of the Court, his functions being entirely distinct from those of a receiver.<sup>75</sup>

So also the Master in Chancery in England will not be considered as a proper person for the receivership; because he is an officer of the Court whose duty it would be to examine the receiver's accounts and to check his conduct.<sup>76</sup>

On similar grounds and for similar reasons Courts would avoid as far as possible appointing any person to a receivership whose duty it would be to watch the proceedings of the receiver.<sup>77</sup>

A person who is under security to the Crown is not considered a proper person to be appointed a receiver.<sup>78</sup> The reason of this rule is this. Such a person having in that capacity given security to the Crown, if he were to become indebted to the Crown and also to the benefit of the parties to the suit, the Crown might, by its prerogative process, sweep away all his property, with the result that his liabilities to the parties interested in the suit would be lost.<sup>79</sup>

(72) Civil Procedure Code, 1908, O. XL, r. 5.

(73) The following observations of Irwin, C.S.I., Offg. C.J., may well be noted :—"The property is valued at some Rs. 70,000. The bailiff of the Court has only given security to Government to a small extent as compared with Rs. 70,000. The Receiver to such a property should give good security in the first instance. Secondly, the bailiff is an officer who has plenty to do, and to administer the property of such value might unduly interfere with the performance of his other duties. The plaintiffs should nominate some one else who should furnish due security." *Ranganayagi Ammal v. Mahali Pillay*, 3 L.B.R. 358.

(74) *White v. Britton*, 72 S.C. 175, 51 S.E. 547.

(75) See *Hammer v. Kaufman*, 39 Ill. 87; *Waters v. Carroll*, 9 Yerg. 102; *High on Receivers*, S. 71, p. 99. But there are some reported cases in which the Courts have appointed under certain circumstances their own clerks as receivers (*Ibid*).

(76) *Benneson v. Bill*, 62 Ill. 408.

(77) *Stone v. Wishart*, 2 Madd. 63.

(78) *Att.-Gen. v. Day*, 2 Madd. 246 (254).

(79) *Ibid*.

(xvii) Person in the position of Accountant to Crown.

Upon the same principle the appointment of any person being in the position of an accountant to the Crown would probably be also open to objection.<sup>80</sup>

As we have already seen, a receiver is an officer of the Court, and consequently he must be a person over whom the Court can exercise its effective control. The ordinary procedure by which the Court exercises its control over the receiver, when he misconducts himself, is by means of commitment for contempt. Consequently, it follows that if a person has privileges which protect him from the ordinary process of the Court, he is not a proper person for the receivership.<sup>81</sup>

Example  
(a) peer.

Consequently it has been held that a peer is not a competent person to be appointed.<sup>82</sup>

(b) Member of the House of Commons.

Although it has been said that the membership of the House of Commons could not be pronounced to be an absolute disqualification,<sup>83</sup> yet the same considerations which render the appointment of a peer not proper, also apply to the case of a member of the House of Commons.<sup>84</sup>

Generally speaking, Courts are averse to appointing as receivers persons who occupy any relations of trust towards the property or estate which is the subject of the receivership. And a trustee or executor, appointed by a testator for the management of his estate, is usually regarded as an improper person to be appointed receiver of the estate.<sup>85</sup> The reason for this disqualification is found in the fact that the Court, in this class of cases, expects the trustee to watch the proceedings with an adverse eye, and to see that the receiver does his duty.<sup>86</sup>

(80) Daniell's Chancery Practice, 7th Ed., Vol. II, p. 1429.

(81) See *Att.-Gen. v. Gee*, 2 Ves. & Bea. 208.

(82) See *Att.-Gen. v. Gee*, 2 Ves. & Bea. 208.

(83) See the remarks of Lord Eldon in *Wynne v. Lord Newborough*, 15 Ves. 284.

(84) See *Long Wellesley's case*, 2 R. & M. 639; *Lechmere Charlton's case*, 2 M. & C. 316; *Re Armstrong, Ex parte Lindsay*, (1892) 1 Q.B. 327; Kerr on Receivers, 1912, 6th Ed., p. 142.

(85) *Sutton v. Jones*, 15 Ves. 584 at pp. 587, 588. And this is true regardless of whether he is a sole trustee, or whether there are others joined with him as co-trustees under the will of the testator. *Anon v. Jolland*, 8 Ves. 72. A receiver whose private interests are in conflict with his duties, as in the case of a trustee, would not be appointed, or, if appointed, would be removed, although his acts may for the most part have been for the general good of the property and although a majority of the parties in interest may desire that he be appointed or retained. *Fripp v. Chard Railway*, 11 Ha. 241, 260; cf. *Cookes v. Cookes*, 2 D. J. & S. at p. 530. See also Kerr on Receivers, 6th ed., 1912, p. 138.

(86) *Sykes v. Hastings*, 11 Ves. 363.

The beneficiary, if he is to have a receiver is entitled to the superintendence of the trustee as a check.<sup>87</sup>

A second reason against his eligibility is to be found in the fact that two characters of trustee and receiver are rarely compatible.<sup>88</sup> A further reason against his appointment is, that unless he undertakes to act without remuneration, his appointment would involve a violation of the fundamental rule of equity that a trustee cannot derive any benefit from the discharge of his duty as trustee.<sup>89</sup>

There may however be special circumstances where the appointment of such a person for the receivership will be beneficial to the estate, as, for instance, where he has a peculiar knowledge of the estate, or no one else can be found who will act with the same benefit to the estate. In such cases the Court will make the trustee receiver.<sup>90</sup>

When such exceptional cases arise and the Court thinks fit to appoint a trustee for the receivership, he will generally be required by the Court to act, if appointed, without any remuneration.<sup>91</sup> But it must not be understood that the trustees appointed should act without remuneration is always an inflexible rule. The Court may allow some remuneration if it choose.<sup>92</sup>

A trustee will not be made receiver, even though he be ready to act without remuneration, if he is the only person who ought to check the receiver for the benefit of the persons beneficially interested.<sup>93</sup>

(87) See *Sykes v. Hastings*, 11 Ves. 363. *Sutton v. Jones*, 15 Ves. 587. *Hibbert v. Jenkins*, 11 Ves. 363; see High on Receivers, S. 74, pp 103, 104; Kerr on Receivers, 6th Ed., 1912, pp. 137-140. Riviere, on Receivers, 1912, p. 14. If a trustee is appointed he would not be entitled to any salary, although the order is silent on the point; it is usual, however, for the order to express that he is appointed without salary. The rule is not inflexible, and the fact that the order is silent as to remuneration does not amount to a decision that there should not be any. *Pilkington v. Baker*, 24 W.R. 234; *Re Bignell*, (1892) 1 Ch. 59; see also Daniell's Chancery Practice, 7th ed., Vol. II, 1901, p. 1428.

(88) Kerr on Receivers, 6th Ed., 1912, p. 138.

(89) *Sykes v. Hastings*, 11 Ves. 363; *Sutton v. Jones*, 15 Ves. 587.

(90) Thus the chairman of the trustees of a dock Company (*Ames v. Birkenhead Docks*, 20 Beav. 332) one of the committee of management of a company (*Potts v. Warwick and Birmingham Canal Company*, Kay, 143) a chartered accountant though resident abroad were appointed receivers. *In re Carshalton Park Estate, Ltd.*, 1908, 1 Ch. p. 66). See Kerr on Receivers, 6th Ed., 1912, p. 139.

(91) Thus, where a testamentary guardian and executor and a tenant for life who was also a trustee was appointed to act as receiver, an undertaking to act without remuneration was insisted upon by the Court. *Gardner v. Blane*, 1 Ha. 381; *Powys v. Blgrave*, 18 Jur. 463; See Kerr on Receivers, 6th Ed., 1912, p. 139.

(92) *Re Bignell*, *Bignell v. Chapman*, (1892), 1 Ch. 59.

(93) *Sutton v. Jones*, 15 Ves. 584. A trustee whose duty is merely to preserve contingent remainders, or who is invested with powers of sale and exchange which cannot be immediately exercised, does not suffer from such great disqualifications as one who has got much more active duties to perform. A trustee having a power to lease will generally be regarded as a disqualification for the appointment. *Sutton v. Jones*, 15 Ves. 587; See also Kerr on Receivers, 6th Ed., 1912, p. 140; Wharton's Law Lexicon, 11th Ed., 1911, p. 717.



(xx) Other persons in fiduciary relationship.

The same rules that apply to trustees also apply to the case of other persons holding a fiduciary relationship.<sup>94</sup>

Examples :

(a) Next friend of a minor.

On this principle the next friend of a minor has been held not to be a proper person to be appointed as receiver.<sup>95</sup>

(b) Son of the next friend.

This rule has been extended even to the extent of disqualifying the son of a next friend.<sup>96</sup>

(c) Guardian of an infant.

So also the guardian will not be a proper person ; but under special circumstances the guardian may be appointed receiver.<sup>97</sup>

(d) Solicitor of a party having conduct of the suit.

Similarly, the solicitor of a party having the conduct of the suit cannot be appointed receiver.<sup>98</sup>

The reason of the rule in all the above cases is that it is the duty of these persons to watch and scrutinize the accounts and to check the conduct of the receiver. This function is so incompatible with the function of the receiver, that the Court will not, as far as possible, permit them to be combined in one and the same person.<sup>99</sup>

“ In partnership cases, the administrator of a deceased partner, if a fit person in other respects, may be appointed receiver of the firm’s assets, when the surviving partners are guilty of laches and waste in the settlement of the business. For while, primarily, such administrator has no rights in the settlement and adjustment of the partnership affairs, yet, if there be unreasonable delay in the performance of this duty by the surviving partners, it becomes the right and duty of the administrator of the deceased partner to file a suit for an accounting and a receiver, and he himself may then be appointed upon giving additional bond with proper security.”<sup>100</sup>

A mortgagee may be appointed receiver.<sup>101</sup> Such an appointment would be an apparent exception to the rule that “ trustees are ineligible as receivers over the subject-matter

(94) See *Cookes v. Cookes*, 2 D.J. & S. 530.

(95) *Stone v. Wishart*, 2 Madd. 63 ; Wharton’s Law Lexicon, 11th Ed., 1911, p. 717.

(96) See the judgment of Lord Eldon in *Taylor v. Oldham*, Jac. 527, 529.

(97) See Seton on Judgments, 7th Ed., p. 951 ; Kerr on Receivers, 6th Ed., 1912, p. 140.

(98) *Garland v. Garland*, 2 Ves. Jr. 137 ; *Wilson v. Poe*, 1 Hog. 322. Cf. *Grundy v. Buckridge*, 22 L.J. Ch. 1007.

(99) See *Stone v. Wishart*, 2 Madd. 64.

(100) *Miller v. Jones*, 39 Ill. 54. High on Receivers, S. 78, p. 105.

(101) *Re Prytherch*, 1889, 42 Ch. D. 590.



of the trust." Such an exception has been recognized in the case of the appointment as receiver of a mortgagee of real estate, occupying the relation of trustee of the equity of redemption. When such mortgagee has been appointed receiver of the mortgaged premises, his position and duties as receiver would be held to be paramount to those as mortgagee, and his interest in the latter capacity would be held to be subordinate to his duties as receiver."<sup>102</sup>

Sometimes a person having a lien on the property may be appointed receiver.<sup>103</sup> In such a case the same principles that govern the appointment of a mortgagee apply here also.

(xxiii) Person having a lien on the property.

As an instance of a person who has lien on the property being appointed may be mentioned the case of an unpaid vendor.<sup>104</sup>

Example—Unpaid vendor.

In some cases a tenant for life may be appointed receiver on his undertaking to act without salary.<sup>105</sup>

(xxiv) Tenant for life.

A creditor of an insolvent cannot be said to be disqualified for receivership merely by reason of his interest in the property. Such a person may properly be appointed where no facts appear to show that he is otherwise disqualified.<sup>106</sup>

(xxv) Creditor of insolvent.

A receiver of debtor is not a proper person to act as his assignee in bankruptcy.<sup>107</sup>

(xxvi) Receiver of debtor is ineligible as his assignee in bankruptcy.

A person whose appointment as receiver will cause difficulty in the administration of justice, will not be appointed as a rule. To this class may be referred the case of the Master in Chancery,<sup>108</sup> solicitor under a commission in lunacy,<sup>109</sup> and the Master of the Supreme Court who is attached to the Chancery Division of the High Court.<sup>110</sup>

(xxvii) Person whose appointment will cause difficulty in the administration of justice.

(102) *Bolles v. Duff*, 54 Barh. 215.

(103) *Boyle v. Bettws Llantwit Colliery Co.*, (1876) 2 Ch. D. 726.

(104) *Ibid.*

(105) *Powys v. Blagrove*, 18 Jur. 462.

(106) *Barber v. International Co.*, 73 Conn. 587, 48 Atl. 758.

(107) See *In re Stuyvesant Bank*, 5 Benedict. 566.

(108) *Ex parte Fletcher*, 6 Ves. 427.

(109) *Ex parte Pingle*, 2 Mer. 452.

(110) *Kerr on Receivers*, 6th Ed., 1912, p. 141.

“Where an application is made to the Court by debenture-holders to appoint a receiver, and an application is also made (xxviii) Liquidator. to appoint a liquidator, it is a rule of convenience that the Court will take care, in order to avoid trouble and expense, that the receiver and the liquidator shall be one and the same person in every case where that can properly be done.<sup>111</sup> Accordingly where, after the making of an order to wind up a company and the appointment of a liquidator, the appointment of a receiver is applied for by the plaintiffs in a debenture-holder's action, the liquidator will, as a general rule, be appointed receiver,<sup>112</sup> unless there are special circumstances in the case rendering it undesirable that he should be appointed, e.g., if he has assumed a position of hostility to the debenture-holders.<sup>113</sup> If the judge of first instance has come to the conclusion that there are such circumstances, the Court of Appeal will not overrule the exercise of his discretion.”<sup>114</sup>

Under the practice obtaining in the Courts in England, where a receiver is sought to be appointed on behalf of debenture-holders or other creditors of a company, the (xxix) Official receiver. official receiver may be so appointed.<sup>115</sup>

In England it has been held that the receiver-general of a county is not a proper person for the (xxx) Receiver-general of a county. receivership.<sup>116</sup>

The directors and secretary of a railway company will generally be appointed as receivers or managers of the undertaking of the company, when a necessity for such appointment arises.<sup>117</sup>

(111) *Re Joshua Stubbs*, (1891) 1 Ch. 475 (482).

(112) *Perry v. Oriental Hotels Co.*, L.R. 5 Ch. 420; *Tottenham v. Swansea Zinc Ore Co.*, W.N. 1884, 54; 53 L.J. Ch. 776.

(113) *Giles v. Nuthall*, W.N. 1885, 51; see also *Boyle v. Bettws & Co., Colliery Co.*, 2 Ch. D. 726; and *Strong v. Carlyle Press*, (1893) 1 Ch. 268.

(114) *Giles v. Nuthall*, W.N. 1885, 51. Where a receiver of the property of a Company which is being wound up has been ordered, the liquidator should in general be appointed receiver; and the liquidator's title is paramount to that of a receiver appointed on behalf of the mortgagees, and such appointment will be superseded on the application of the liquidator. *Perry v. Oriental Hotels Co.*, 5 Ch. 420; *Re Joshua Stubbs, Ltd.*, (1891) 1 Ch. 475; *Strong v. Carlyle Press*, (1893) 1 Ch. 268. And see *Boyle v. Bettws Llantwit Colliery Co.*, 2 C. D. 726; See Daniell's Chancery Practice, 1901, 7th Ed., Vol. II, p. 1428.

(115) See Companies (Consolidation) Act, 1908, s. 69. See also *Dacon v. Arden*, 50 L.T. 584.

(116) See *Att.-Gen. v. Day*, (1817) 2 Madd. 246.

(117) *Re Manchester and Milford Railway Co.*, (1880) 14 Ch. D. 645.

In compulsory proceedings against corporate bodies, it is regarded as manifestly improper to appoint as receiver an officer of, or persons connected with, the management of its affairs. This rule of exclusion may be regarded as based on sound principles of public policy.<sup>118</sup>

But if an officer or director of a corporation is specially qualified by reason of his knowledge and familiarity with the affairs of the concern, and if the best interests of the estate will be promoted by his management, a departure from the rule may be made and an officer and director of the corporation allowed to act as receiver of the corporation.<sup>119</sup>

“Upon proceedings in equity against an insolvent corporation for the winding up of its affairs, and the appointment of a receiver, the person selected for the trust need not necessarily be an individual person, and a corporate body may itself be appointed receiver of another corporation upon the insolvency of the latter.”<sup>120</sup>

While the final selection and the ultimate appointment must always rest with the Court, there is no objection to the Court's consulting and generally it would be the best procedure to consult, with the counsel or with the parties interested, as to the fitness of the person to be appointed.<sup>121</sup>

Any objection regarding the eligibility of any particular person proposed for the receivership must be taken at the earliest possible opportunity. If it be not so made, it would be deemed to have been waived.<sup>122</sup> Thus, it has been held that, where a plaintiff who had procured the appointment of a receiver failed at the proper time to raise any objection to the qualification of the receiver, he cannot afterwards be allowed to question such appointment on the ground that the person appointed was disqualified by reason of interest.<sup>123</sup>

Power of Court to consult with parties or counsel.

Practice as to objection to the eligibility of a proposed person for receivership.

(118) High on Receivers, S. 72, pp. 100, 102.

(119) *Farmers Loan Trust Co. v. Northern Pac. R. Co.*, 64 Fed. 546.

(120) High on Receivers, S. 73, p. 102.

(121) *Polk v. Johnson*, 160 Ind. 202, 66 N. E. 752, 98 Am. St. Rep. 274.

(122) *Roby v. Title G. & T. Co.*, 166 Ill. 336.

(123) *Threadgill v. Colcord*, 15 Okla. 447; see also High on Receivers, S. 81 (a) p. 107.

## CHAPTER VII.

### OVER WHAT PROPERTY APPOINTED.

Value of precedents—Each case depends on its own peculiar circumstances.  
Generally, no limitations exist as regards kind of properties in respect of which receiver can be appointed.

Property must be the subject of pending suit.

Equitable property.

Moveable and immoveable property.

Real and personal estate.

Land.

Undivided share of land.

Chattels.

Salary and earnings.

Salary and earnings which by law are not assignable.

Future salary and earnings.

Salary and earnings not yet fixed or apportioned.

Pensions.

Pension which has already become payable.

Pension granted entirely for past services.

Pension granted for future services and to enable the grantee to keep up the dignity of his office.

Money received for commutation for pension.

Annuity.

Gratuity.

Voluntary allowance.

Heirlooms.

Public offices.

Debts.

Bankrupt's estate.

Rates.

Tolls.

Dividends of Government or other securities.

Chose in action.

Costs.

Reversionary interests.

Inalienable property.

Married woman's property.

Alimony.

Property in the hands of trustees.

Property which a debtor can make his own by exercising a power of appointment.

Business concern.

Business of a solicitor.

Books and papers.

Patent.

Railway, Tramway, Ship.

Theatre.

Property likely to be destroyed by appointment of a receiver.

Property out of jurisdiction.

THE appointment of a receiver resting, as has been stated, in the sound discretion of the Court, it is obviously impossible to lay down in definite terms any general rule as to in what particular cases and with regard to what property, a receiver is or is not to be appointed; for, the Court, in arriving at a decision as to whether a case presented to it is one for the exercise of its discretion, must necessarily be guided by all the surrounding circumstances. These surrounding circumstances are often too numerous and too varied to be brought under any general rule or legal formula. And any rules that we may possibly attempt to lay down, would have to be qualified by so many exceptions and modifications, that they would lose much of their value as general rules applicable to the facts of any particular case. Hence, we shall, in the course of this chapter, without attempting to deduce any definite principles, simply examine the several cases that have come before our Courts and the Courts in England, and see in respect of what property receivers were appointed and in respect of what property they were refused. In examining those cases, we shall incidentally refer to the reasons that weighed with the Courts in granting or refusing the receivership.<sup>1</sup>

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(1) Many of the cases in England on this subject turn on the peculiarities of the English Law and the special modes of procedure applicable to the English Courts, and as such would not be useful to the Indian lawyer. We have attempted to collect in this chapter only so much of English cases, that may be of some use to the Indian practitioner.

Professor Pomeroy, in his work on Equity Jurisprudence, enumerates four classes of cases in which a receiver may be appointed.

"The first class contains those cases where there is no person entitled to the property who is at the same time competent to hold and manage it during the judicial proceeding. \* \* \* As examples of this class may be given, 1. Infants' estates. \* \* \* 2. Lunatics' estates. \* \* \* 3. Estates of decedents.

"The second class is based upon the fact that all of the parties are equally entitled to the possession of the property which is the subject-matter of the controversy, but it is not just and proper, from the nature of the dispute and of their relations with each other, that either one of them should be allowed to retain possession and control during the litigation. \* \* \* The following may be cited as examples of this class:—1. Suits between partners. 2. In suits for partition between co-owners. \* \* \* 3. In suits between conflicting claimants of land \* \* \* a receiver will not ordinarily be appointed.

"The third class embraces those cases in which the person holding title to the property is in a position of trust or of *quasi* trust and is violating his fiduciary duties by misusing, misapplying or wasting the property, and is thereby endangering the rights of other persons beneficially interested. \* \* \* To this class belong the following cases:—1. Suits against trustees who have been guilty of a breach of trust. 2. Suits under like circumstances against executors or administrators. 3. Suits to enforce a mortgage when the security is inadequate, the mortgagor is insolvent, or is committing acts of waste and the like, depreciating the value of the property. 4. Suits under like circumstances to enforce equitable liens, including those by judgment-creditors in the nature of an equitable execution. 5. Suits under like circumstances, and for a like reason by vendor to enforce the specific performance of a contract for the sale of land against a vendee who is in possession. 6. Suits by creditors, although not strictly creditors' actions by judgment creditors, brought to



An examination of the cases bearing on the subject shows that there has been absolutely little or no limit as regards the kind of properties in respect of which receivers have been appointed. In fact, wherever it is necessary to preserve property from being wasted or deteriorated during the pendency of a suit or to help a judgment-creditor to obtain the fruits of his decree by way of equitable execution, the Courts have assumed the widest possible discretion. Unless actually prohibited by any positive rule of law or any consideration of morality or public policy, the Courts do not find themselves fettered by any rules as regards the kind of property which they will lay their hands upon.

Thus receivers have been appointed of all kinds of property, including such diverse forms of property, as—of a manor <sup>2</sup>, of heirlooms <sup>3</sup> and chattels <sup>4</sup>, and of the tolls of a turnpike <sup>5</sup>, canal <sup>6</sup>, railway <sup>7</sup>, tramway <sup>8</sup>, market <sup>9</sup>, and dock<sup>10</sup>, of the freight of a ship<sup>11</sup>, and of funds in settlement.<sup>12</sup>

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enforce their demands from the debtors' property, under some very special circumstances involving great danger of loss, such as the debtors' non-residence, insolvency and the like. 7. Suits for the rescission of a contract of the sale of land under special circumstances. 8. Suits to enforce payment of the arrears of annuities. 9. Suits for the protection of remaindermen against the life-tenant or other holder of the particular estate. 10. Suits under many circumstances against corporations. 11. Suits and proceedings in bankruptcy.

"Fourth class. This class contains those cases in which a receiver is appointed after judgment for the purpose of carrying the decree into effect." 3. Pomeroy's Equity Jurisprudence, 2nd Ed., Ss. 1332—1335.

(2) *Thelluson v. Woodford*, Seton, 767; See *Pym v. P.*, Seton, 767.

(3) *E. Shaftesbury v. D. Marlborough*, Seton, 768.

(4) *Taylor v. Eckersley*, 2 C.D. 302.

(5) *Knapp v. Williams*, 4 Ves. 430, n. (a); *Dumville v. Ashbrooke*, 3 Russ. 98 n.; *Crew v. Edleston*, 1 De G. & J. 93.

(6) *Fripp v. Chard Ry. Co.*, 11 Ha. 241; *Potts v. Warwick, &c., Canal Co.*, Kay, 142; *Hopkins v. Worcester, &c. Canal*, 6 Eq. 437.

(7) *Russell v. East Anglian Ry. Co.*, 3 Mac. & G. 104; *Furness v. Katerham Ry. Co.*, 25 Beav. 614; *Marling v. Stonehouse, &c. Ry. Co.*, 17 W.R. 484 (English case); *Kingston v. Cowbridge Ry. Co.*, 41 L.J. Ch. 152.

(8) *Marshall v. S. Staffordshire Tramways Co.*, (1895) 2 Ch. 36; *Bartlett v. W. Metropolitan Tramways Co.*, (1893) 3 Ch. 437.

(9) *De Winton v. May*, Brecon, 26 Beav. 533.

(10) *Ames v. Birkenhead Docks*, 20 Beav. 332; *Postlethwaite v. Maryport Harbour Trustees*, W.N. (1869) 27. As to receivers of the property of companies, see Seton, 787, 788; Kerr, 57-70; *Re Victoria Steamboats, Limited*, (1897) 1 Ch. 158.

(11) *Roberts v. R.*, Seton, 772; and see *Fairfield Shipbuilding Co. v. London & East Coast Express Steamship Co.*, W.N. (1895) 64 (receiver of a steamship with power to manage).

(12) *Brown v. Walter*, Seton, 768.

Again Courts have granted 'an order of receivership over a newspaper<sup>13</sup>; over tithes<sup>14</sup>; over a rentcharge<sup>15</sup>; over public-house licenses<sup>16</sup>; over an equity of redemption<sup>17</sup>; where a legal estate is outstanding<sup>18</sup>; where a fund in another Court is payable to a judgment-debtor<sup>19</sup>; over the income of a trust fund<sup>20</sup>; over a judgment-debtor's interest in an outstanding charge upon land and subsisting policies of insurance<sup>21</sup>; over the interest of a joint tenant.<sup>22</sup> Again, a receiver may be appointed of a reversionary interest<sup>23</sup>; of a sufficient portion of a reversionary legacy to satisfy plaintiff's debt<sup>24</sup>; of the separate estate of a married woman which she is not restrained from anticipating,<sup>25</sup> even though the applicant's claim is only in respect of costs which have not been taxed<sup>26</sup>; and of the arrears of income which she is restrained from anticipating,<sup>27</sup> provided such arrears have accrued due before the date of the judgment.<sup>28</sup>

Hence it is only in very rare cases, and only on very strong grounds, that Courts have refused to grant a receivership over any particular property.

<p><b>Property must be the subject of pending suit.</b></p>	<p>In spite of the general terms of Order XL of the new Code of Civil Procedure, a Court has no jurisdiction to appoint a receiver of property not the subject of litigation in the suit.<sup>29</sup></p>
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(13) *Chaplin v. Young*, 6 L.T.N.S. 97; *Kelly v. Hutton*, 17 W.R., 425 (English case).

(14) *Lymberg v. Helsham*, 1 Ir. Ch. 633.

(15) *Wise v. Boresford*, 3 Dr. & War. 276; *Cullen v. Dean, etc., of Killaloe*, 2 Ir. Ch. 133.

(16) *Charrington & Co. v. Camp*, (1902) 1 Ch. 386; *Leney & Sons Ltd. v. Callingham* (1908) 1 K.B. 79.

(17) *Ex parte Evans*, 13 Ch. D. 253; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Smith v. Cowell*, 6 Q.B.D. 75.

(18) *Wells v. Kilpin*, L.R. 18 Eq. 298.

(19) *Westhead v. Reilly*, 25 Ch. D. 413; see *Fahey v. Tobin*, (1901) 1 Ir. R. pp. 516, 517.

(20) *Oliver v. Lowther*, 28 W.R. 381; *Webb v. Stenton*, 11 Q.B.D. 530.

(21) *Beamish v. Stevenson*, 18 L.R. Ir. 319; see *Orr v. Grierson*, 28 L.R. Ir. 20.

(22) *Hills v. Webber*, 17 T.L.R. 513.

(23) *Fuggle v. Bland*, 11 Q.B.D. 711; *Tyrrell v. Painton*, (1895) 1 Q.B. 202; *Ideal Bedding Co. v. Holland*, (1907) 2 Ch. 157; and see *Re Jones and Judgments Act*, 1864, W. N. 1895, 123; *Re Harrison and Bottomley*, (1899) 1 Ch. 465.

(24) *Macnicoll v. Parnell*, 35 W.R. 773.

(25) *Bryant v. Bull*, 10 Ch. D. 153; *Re Peace and Waler*, 24 Ch. D. 405; *Perks v. Mylrae*, W.N. 1884, 64; *Hill v. Cooper*, (1893) 2 Q.B. 85.

(26) *Cummins v. Perkins*, (1899) 1 Ch. 16.

(27) *Hood Barrs v. Heriot*, (1896) A.C. 174.

(28) *Whiteley v. Edwards*, (1896) 2 Q.B. 48; *Re Lumley*, (1896) 2 Ch. 690; *Bolitho v. Gidley*, (1905) A.C. 98; *Colyer v. Isaacs*, 77 L.T. 198.

(29) Per Lucas, J. C. and Crouch, A.J.C. in *Pounchbai v. Lekhraj*, 4 Ind. Cas. 605 = 3 S.L.R. 118. The outstandings due to the deceased are not at all the subject of litigation in a suit for declaration that all the property of the deceased belongs to the plaintiff; the subject of litigation is merely the right to recover them.

As has been stated, the appointment of a receiver is not limited to such property as may be taken in execution, but extends to "whatever is considered in equity to be assets."<sup>30</sup>

Thus receivers have often been appointed over an equity of redemption.<sup>31</sup>

Moveable and  
immoveable  
property.

Real and per-  
sonal estate.

Receivers may be appointed in respect of moveable as well as immoveable property, over the rents and profits of real estate as well as of personal estate which is capable of being reduced into possession.<sup>32</sup>

In cases of disputed title a receiver may be appointed of the land in dispute, even though the claim of one of the parties is founded on a legal title.<sup>33</sup>

It is also competent to the Court to appoint a receiver of an undivided share of land,<sup>34</sup> and of the interest of a joint tenant in land.<sup>35</sup>

The following statement of law by Mr. Lucas, J. C. & Mr. Crouch, A.J.C. may also be noted:—"Lekhraj, who alleges that he is the adopted son of Valabdas, deceased, has filed this suit against the widow of Valabdas, praying for a declaration that all the property of the deceased belongs to him, subject only to the widow's right of maintenance and residence. The appointment of the receiver is altogether improper, and the order of appointment must be set aside. The only person legally entitled to recover outstandings due to Valabdas, deceased, is one to whom probate, or letters of administration, or a certificate has been granted. (See Act VII of 1889, S. 4). A receiver appointed in this suit would have no more power to grant a valid receipt than the parties themselves; and, as the learned Subordinate Judge has himself pointed out, a party not armed with a certificate under the Succession Certificate Act, could only recover debts by collusion with the debtors. Further, if the debts were recovered and deposited by the Receiver in *custodia legis*, the Court would hold them in trust for the estate of the deceased. It would have no power to deal with them in execution of any decree passed in this suit, nor could it properly hand them over to any but the person legally authorised to represent the deceased. Though plaintiff and defendant are the only persons before the Court laying claim to the estate of the deceased, they do not, therefore, legally represent such estate. The outstandings due to the deceased are not the subject of litigation in this suit at all; the subject of litigation is merely the right to recover them. It seems necessary to point out that, in spite of the general terms of Order XL of the new Civ. Pro. Code, a Court has no jurisdiction to appoint a receiver of property not the subject of litigation in the suit. If the plaintiff seeks merely to have the impediments offered by defendant to the exercise of his alleged right to recover the outstandings removed, the appropriate relief is by way of injunction." Per Lucas J.C. and Crouch A.J.C. in *Pounchbai v. Lekhraj*, 4 Ind. Cas. 605=3 S.L.R. 118.

(30) *Blanchard v. Cawthorne*, 4 Sim. 572; *Gore v. Bowser*, 3 Sm. & G. 8; and see *Willis v. Cooper*, 44 S.J. 698, where the court refused to appoint a receiver over untaxed costs in respect of which legal execution could not issue.

(31) *Ex parte Evans*, 13 Ch. D. 253; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Smith v. Cowell*, 6 Q.B.D. 75.

(32) See Daniell's Chancery Practice, 7th Ed., p. 1424.

(33) *Foxwell v. Van Grutten*, (1897) 1 Ch. 64; *John v. John*, (1898) 2 Ch. 573.

(34) *Calvert v. Adams*, (1773) 1 Dick. 178; *Evelyn v. Evelyn*, (1750) 1 Dick. 800; *Hargrave v. Hargrave*, (1846) 9 B. 549; *Fell v. Elkins*, (1861) 9 W.R. 861.

(35) *Hills v. Webber*, (1901) 17 T.L.R. 513 (English case).

**Growing Crops.**

Growing Crops are considered in this respect as part of the land and a receiver may be appointed to harvest and preserve the same.<sup>36</sup>

**Chattels.**

The Court may in a proper case appoint a receiver by way of equitable execution of chattels,<sup>37</sup> but not if they are in the possession of the debtor and are subject to ordinary execution.<sup>38</sup> In this connection it may also be noted that, under the English practice, a receiver by way of equitable execution will only be granted when there is an impediment to legal execution.

**Salary and earnings.**

Receivers have been appointed by way of equitable execution of earnings or salary already due, even in the cases where the recipient of such salary cannot anticipate or alienate the same.<sup>39</sup>

**Salary and earnings which by law are not assignable.**

A receiver cannot be appointed of a salary or earnings which are unassignable, except, in so far as the same have actually become due.<sup>40</sup>

The fact whether the salary is expressly made unassignable, or it is so on grounds of public policy, is not material for the application of the above rule.<sup>41</sup>

Thus salaries attached to public offices in the performance of the duties of which the public are interested are unassignable on grounds of public policy.<sup>42</sup> In such cases the interest of the State often requires that the persons holding those offices should be left in a fit state to perform them. The Court would not, to enable a single creditor to get the amount decreed to him cause serious inconvenience to the public by appointing a receiver of the salary or income of such officer, before they become due.

Acting on this principle Courts in England have declined to appoint a receiver in the case of the salary of an assistant parliamentary counsel to the Treasury,<sup>43</sup> a clerk of the peace,<sup>44</sup> or of a petty sessions clerk in

(36) See *Corcoran v. Doll*, 35 Cal. 476 (American); whether growing crops are included in the term "immoveable property" see Transfer of Property Act, 1882, S. 3; General Clauses Act, 1897, S. 3 (25); Registration Act, 1908, S. 3; Indian Succession Act, S. 3.

(37) *Levasseur v. Mason*, (1891) 2 Q. B. 73.

(38) *Manchester and Liverpool District Banking Co., Ltd. v. Parkinson*, (1888) 22 Q.B. D. 173.

(39) *Picton v. Cullen*, (1900) 2 I.R. 612.

(40) *Ibid.*

(41) *Reviere on Receivers*, 1912, p. 19.

(42) *Grenfell v. Dean of Windsor*, (1840) 2 B. 544 (Eng.); *Mirams Re*, (1891) 1 Q.B. 594; *Picton v. Cullen*, (1900) 2 I.R. 612.

(43) *Cooper v. Reilly*, (1829) 2 Sim. 560.

(44) *Palmer v. Bate*, (1821) 2 Brod. & B. 673.

Ireland.<sup>45</sup> The emoluments attached to a fellowship of a college may be seized by the Court through its receiver; because the interests of the public do not require the performance of such an office, by the particular person, as imperatively as in the cases referred to above.<sup>46</sup>

A salary derived from an ecclesiastical benefice is unassignable by Act of Parliament. Hence it has been held that a receiver cannot be appointed of such salary.<sup>47</sup> But a receiver may be appointed of salary derived from a canonry,<sup>48</sup> and the office of chaplain to a workhouse,<sup>49</sup> such earnings not being unassignable under any provision of law.

A receiver may also be appointed of the salary derived from the office of royal forester.<sup>50</sup>

**Future salary and earnings.** As a general rule a receiver cannot be appointed by way of equitable execution of future earnings and salaries.<sup>51</sup>

“ In determining whether or not the property is of such a nature that the Court will appoint a receiver of it, it is necessary to consider the nature of the applicant's title. If he is seeking to enforce a charge given by the respondent, he will obtain the assistance of the Court much more readily than if he is merely a judgment-creditor applying for equitable execution. In the former case he could have a receiver of the respondent's future earnings; in the latter he could not.”<sup>52</sup>

(45) *Mc Creery v. Bennett*, (1904) 2 I.R. 69. Where the profits of the office of clerk of the peace for a county had been assigned for the payment of creditors, a receiver was appointed, pending the discussion of a question as to the validity of the assignment; *Palmer v. Vaughan*, 3 Swanst. 173; but a receiver of the salary of Assistant Parliamentary Counsel to the Treasury was refused, pending such a discussion; it being held upon grounds of public policy that the salary of such an office was not assignable. *Cooper v. Reilly*, 2 Sim. 560; aff. 1 R. & M. 560.

(46) *Feistel v. King's College, Cambridge*, (1847) 10 B. 491 (English case); but see also *contra*, *Berkeley v. King's College, Cambridge*, (1830) 10 B. 602 (English case).

(47) *Bates v. Brothers*, (1854) 2 Sm. & G. 509; *Hawkins v. Gathercole*, (1854) 6 D.M. & G. 1.

(48) *Grenfall v. Dean of Windsor*, (1840) 2 B. 544 (English case).

(49) *Re Mirams*, (1891) 1 Q.B. 596.

(50) *Blanchard v. Camthorne*, (1831) 4 Sim. 566.

(51) *Hamilton v. Brogden*, (1891) W.N. 36; *Holmes v. Millage*, (1893) 1 Q.B. 551; *Cadogan v. Lyric Theatre, Ltd.*, (1894) 3 Ch. 338; *Re Johnson*, (1898) 2 I.R. 551; *Mc Creery v. Bennett*, (1904) 2 I.R. 69.

(52) *Holmes v. Millage*, (1893) 1 Q.B. 551, at p. 559. See also Halsbury's Laws of England, Vol. XXIV, S. 681, p. 366; see Kerr on Receivers, 6th Ed., p. 122.



Although the Court would appoint a receiver of salary and earnings that have become due, yet it will not easily be disposed to apportion the earnings due to the defendant on an entire contract partly performed so as to enable a receiver to be appointed of such part of the earnings as shall have been earned up to date.<sup>53</sup>

Salary and earnings not yet fixed or apportioned.

Similar considerations also apply to the case of appointment of receivers of pensions. Generally speaking a receiver may be appointed over pensions which are lawfully assignable.<sup>54</sup> Thus receivers have been appointed in respect of the pension of a retired officer, whether naval, military, or civil, when such pension is not made inalienable by statute.<sup>55</sup>

Pensions.

It is competent to the Court to appoint a receiver by way of equitable execution of any part of a pension of an officer which has already become payable, whether such pension is assignable or not.<sup>56</sup>

Pension which has already become payable.

Pension granted entirely for past services.

A receiver may be appointed of a pension which is granted entirely for past services.<sup>57</sup>

But Courts will not appoint a receiver in respect of a pension which is granted not merely in consideration of past services, but partly for the purpose of supporting the grantee in performance of future duties and to enable him to keep up the dignity of the office entrusted to him.<sup>58</sup> Acting on this principle Courts have refused to appoint

Pension granted for future services and to enable the grantee to keep up the dignity of his office.

(53) *Re Johnson*, (1898) 2 I.R. p. 555.

(54) *Heald v. Hay*, 3 Giff. 467.

(55) *Dent v. Dent*, L.R. 1 P. & M. 366; *Willcock v. Terrell*, 3 Ex. D. 323; *Murphy v. Green*, 26 L.R. Ir. 610; *Molony v. Cruise*, 30 L.R. Ir. 99; *Manning v. Mullins*, (1898) 2 Ir. R. 34; *Birch v. Birch*, 8 P.D. 163; *Lucas v. Harris*, 18 Q.B.D. 127; *Brenan v. Morressy*, 26 L.R. Ir. 618. A pension granted by the Crown is capable of being taken under a sequestration; and such a pension may, it seems, be the subject of a receiver. *Noad v. Backhouse*, 2 Y. & C.C.; and see *Turnstall v. Boothby*, 10 Sim. 542: The rule, however, will not extend to the pension for (i) past services, *Lloyd v. Cheetham*, 3 Giff. 171; *Carew v. Cooper*, 4 Giff. 619; or (ii) to the half-pay of an officer in the army or navy, which is, upon grounds of public policy, also exempt from the operation of a sequestration. 12 W.R. 586, 767; *M'Carthy v. Goold*, 1 Ball. & B. 387; *Stone v. Lidderdale*, 2 Anst. 533, 539; *Collyer v. Fallon*, T. & R. 459, 467.

(56) *Lucas v. Harris*, (1886) 18 Q.B.D. p. 135.

(57) In accordance with this principle receivers have been appointed in the following cases and with regard to the following properties:—(i) pension of a County Court Judge, *Willcock v. Terrell*, (1878) L.R. 3 Ex. D. 323; (ii) an officer of the Royal Irish Constabulary, *Murphy v. Green*, (1890) 26 L.R. Ir. 610; (iii) a retired civil servant, *Molony v. Cruise*, 30 L.R. Ir. 99; (iv) an annual sum granted as compensation for abolition of the post of receiver of first fruits and Crown rents. *Johnson v. Mason*, (1850) 2 Ir. Jur. 170.

(58) *Wells v. Foster*, (1841) 8 M.&W. 152; *Murphy v. Green* (1890), 26 L.R. Ir. 610; *McCreery v. Bennett*, (1904) 2 I.R. 69.

a receiver of the pension of the Lord Chancellor,<sup>59</sup> or of a pension granted for the purpose of supporting the dignities of a peerage.<sup>60</sup>

So, also, it has been held, that a pension granted by State<sup>61</sup> for the more honourable support of the dignities of the Duke of Marlborough, was, upon grounds of public policy, inalienable, and therefore not the subject of a receiver.

Any sum of money received by an officer in the army for commutation of his pension stands on a different basis from actual pension. Such sums not coming within the prohibition contained in the Army Act, 1881, S. 141, against alienation of a pension, a receiver of such money may be appointed.<sup>62</sup>

A retiring annuity or pension of a covenanted member of the Indian Civil Service not being subject to the restrictions imposed by Ss. 11 and 12 of the Pensions (India) Act, 1871, and such annuity not being made unassignable or inalienable in law, may be the subject of receivership.<sup>63</sup>

The Courts will not appoint a receiver over a gratuity which has been notified to have been awarded to a public servant before it is actually paid over,<sup>64</sup> the reason of the rule being that the payment of a sum which is in the nature of gratuity cannot be enforced by the recipient.<sup>65</sup>

In order to entitle the applicant for an order of appointment of receiver the interest affected must be a genuine right of property. A receiver will not be appointed, for instance, of a purely voluntary allowance.<sup>66</sup>

(59) *Davis v. Duke of Marlborough*, (1818) 1 Swanst. 74 at p. 79.

(60) *Davis v. Duke of Marlborough*, (1818) 1 Swanst. 74. Courts are very reluctant to grant a receivership over a pension where a person to whom it is granted remains liable to render future services. *Macdonald v. O'Toole*, (1908) 2 Ir. R. 386.

(61) See Daniell's Chancery Practice, 7th ed., vol. 2, 1901, p. 1424; *Davis v. Duke of Marlborough*, (1818) 1 Swanst 74 at p. 84. See also same case, 2 Swanst. 108 (126).

(62) *Crowe v. Price*, 22 Q.B.D. 429.

(63) See *Knill v. Dumergue*, (1911) 2 Ch. 199.

(64) *Timothy v. Day*, (1908) 2 Ir.R. 26. Simliar principles would apply to the case of gratuity which a private employer has announced his intention of paying. (*Ibid*) at p. 31. Certain observations of the Court of Appeal *in re Lupton* [1912], 1 K B. 107 seem to render doubtful the correctness of the decision in *Timothy v. Day*; see on this point Kerr on Receivers, 6th Ed., p. 129, Note (r).

(65) *Ibid*.

(66) See *R. v. Lincolnshire County Court Judge*, (1887) 20 Q.B.D. 167, which was a case of income of property held on discretionary trusts for the benefit of a debtor. A receivership was refused when the appointment was sought for in respect of rates for paying and lighting expenses to be fixed by a future assessment and collected at a future time, where

**Heirlooms.** Courts may appoint a receiver of heirlooms or of articles specifically bequeathed by will.<sup>66-a</sup>

We have already seen that the appointment of a receiver will not be granted in disputes concerning the right to hold public offices.<sup>67</sup> But, when the question is not one which affects the right or title to the office in controversy, but merely the right to its fees or profits as property, in which plaintiff claims a right or interest by virtue of contract relations with the officer, there would seem to be no objection upon principle to interfering by a receiver in a case otherwise appropriate for the relief.<sup>68</sup> But it is held, upon principles of public policy, that a judgment-creditor is not entitled to a receiver by way of equitable execution over the future salary of the clerk of a Court.<sup>69</sup> And equity will not appoint a receiver of the salary of a public officer when there is no permanent fund out of which it is payable, it being paid out of an allowance voted by parliament from year to year, and when no action can be maintained to recover the allowance or to enforce its payment.<sup>70</sup>

**Debts.** In England it has been held that, when there is any legal impediment to obtaining execution in the ordinary course of law, a receiver will be appointed by way of equitable execution,<sup>71</sup> but that the Court will not grant a receivership if there is no such impediment.<sup>72</sup>

A receiver may be appointed over the property of a mortgagor who has become a bankrupt and although the official Receiver claims to act as receiver of the estate of such a person.<sup>73</sup>

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the commissioners or corporation concerned can take nothing for themselves, but are obliged to apply the proceeds as directed by Statute. *Drewry v. Barnes*, (1826), 3 Russ. 94; see *Preston v. Great Yarmouth Corporation*, (1872) 7 Ch. App. 655. See also *Anund v. Ganesh*, 40 C. 678.

(66-a) *Earl of Shaftesbury v. Duke of Marlborough*, Seton on Judgment and Orders, 7th Ed., p. 734; Daniell's Chancery Practice, 7th Ed., Vol. II, p. 1425.

(67) See Chapter III, *supra*.

(68) *Palmer v. Vaughan*, 3 Swans. 173; *Cheek v. Tilley*, 31 Ind. 121.

(69) *M'Creery v. Bennett*, (1904) 2 L. R. Ir. 69.

(70) *Cooper v. Reilly*, 1 Russ. & M. 560, affirming S. C. 2 Sim. 560; *High on Receivers*, 4th Ed., pp. 31-32.

(71) *Westhead v. Riley*, (1883), 25 Ch. D. 413; *Re Coney*, (1885) 29 Ch. D. 993; *Goldschmidt v. Oberrheinische Metallwerke*, (1906) 1 K. B. 373.

(72) *Manchester and Liverpool District Banking Co., Ltd. v. Parkinson*, (1888) 22 Q.B.D. 173, disapproving *Whittaker v. Whittaker*, (1882) 7 P.D. 15.

(73) See *Deacon v. Arden*, (1884) 50 L.T. 584; and *Pease v. Fletcher*, (1875) 1 Ch. D. 273 noted under the chapter on "Grounds of appointment."

A receiver cannot be appointed of rates which are to be assessed at a future period, the reason of the rule being that until the assessment there is nothing to collect.<sup>74</sup>

Rates.

The case of tolls does not stand on the same footing with that of rates. Tolls are generally a fixed payment and in the nature of a rent. Hence it has been held that there may be a receiver of the tolls of turnpike roads, or of canal or railway, tramway, dock or market companies.<sup>75</sup>

Tolls.

It is not usual to appoint a receiver of the dividends of Government or other securities; the general practice is to order the stocks, &c., to be transferred into Court, and then to let the receiver obtain the dividends from the officer appointed by the Government to disburse such dividends.<sup>76</sup>

Dividends of Government or other securities.

A receiver may be appointed of a chose in action; as for instance of a share of residuary estate in the hands of trustees,<sup>77</sup> or of a fund in Court,<sup>78</sup> or an unpaid legacy.<sup>79</sup>

Chose in action.

Taxed costs may be the subject of receivership by way of equitable execution;<sup>80</sup> but the Court will refuse to appoint a receiver over untaxed costs in respect of which legal execution could not issue.<sup>81</sup>

Costs.

A receiver may be appointed by way of equitable execution of a legal<sup>82</sup> or equitable<sup>83</sup> remainder in real estate, and of a reversionary interest.<sup>84</sup>

Reversionary interests.

(74) *Drewry v. Barnes*, 3 Russ 94; *Preston v. Corporation of Yarmouth*, L.R. 7 Ch. 655; but see the observations of Lord St. Leonard, cited in *Gibbons v. Fletcher*, 11 Ha. 251.

(75) *Drewry v. Barnes*, 3 Russ. 105; *Potts v. Warwick and Birmingham Canal Co.*, Kay, 142; *De Winton v. Mayor, &c., of Brecon*, 26 Beav. 533; *Lord Crewe v. Edleston*, 1 D. & J. 93; *Munns v. Isle of Wight Railway Co.*, L.R. 5 Ch. 418. As to form of order see *Re Manchester and Milford Railway Co.*, Seton, 7th Ed. p. 736; *Re Ticehurst Gas and Water Co.*, 128 L. T. Jo. 516. Kerr on Receivers, 6th Ed., pp. 129, 130; Daniell's Chancery Practice, 7th Ed., p. 1425.

(76) Per Lindley, L.J., in *Re Browne*, (1894) 3 Ch. at pp. 417, 418; Daniell's Chancery Practice, 7th Ed., p. 1427.

(77) *Re Potts*, (1893) 1 Q.B. 648; *Re Marquis of Anglesey*, (1903) 2 Ch. 727.

(78) *Westhead v. Riley*, (1883) 25 Ch. D. 413; *Re Marquis of Anglesey*, (1903) 2 Ch. 727.

(79) *Re McNulty*, (1893) 31 L.R. Ir. 391; *Macnicoll v. Parnell*, (1887) 35 W.R. 773.

(80) Kerr on Receivers, 6th Ed., p. 122 Note.

(81) See *Willis v. Cooper*, 44 S.J. 698; Kerr on Receivers, 6th Ed., p. 122.

(82) *Re Harrison and Bottomley*, (1899) 1 Ch. 464.

(83) *Re Isaac Jones*, (1895) 39 Sol. J. 671.

(84) *Tyrrell v. Plinton*, (1895) 1 Q.B. 202; *Fuggle v. Bland*, (1883), 11 Q.B.D. 711; *Macnicoll v. Parnell*, (1887), 35 W.R. 773; *Ideal Bedding Co., Ltd. v. Holland*, (1907) 2 Ch. 157.



**Inalienable property.**

A receiver cannot be appointed by way of equitable execution or otherwise of inalienable property.<sup>85</sup>

**Married woman's property.**

A receiver may generally be appointed by way of equitable execution of the separate property of a married woman.<sup>86</sup> But where such property is restrained from anticipation, it cannot be the subject of receivership.<sup>87</sup> So, also, if has been held in England that a receiver cannot be appointed by way of equitable execution of the property of a married woman, though not restrained from anticipation, if the debt in respect of which such appointment is asked for was incurred while she was covert and the property subject to a restraint.<sup>88</sup>

No receiver can be appointed over a sum Ordered by a court to be paid by a husband to a wife at definite intervals for her maintenance<sup>89</sup>; nor over alimony ordered to be paid to a wife judicially separated<sup>90</sup>; nor of sums ordered to be paid by a husband for the support of his divorced wife.<sup>91</sup>

A receiver cannot be appointed by way of equitable execution of property in the hands of trustees who have a discretion as to whether they will pay it or not to the judgment-debtor<sup>2</sup>. The disposal of such property being in the absolute discretion of the trustees, the Court will not compel them to exercise their discretion in any particular manner.<sup>93</sup>

**Property which a debtor can make his own by exercising a power of appointment.**

So also Courts will not appoint a receiver in respect of property which a debtor can make his own by the exercise of a power of appointment, when he has not as yet exercised the power.<sup>94</sup> Courts will not compel the debtor to exercise a power for the benefit of his creditors.<sup>95</sup>

(85) Thus it has been held that a receiver can be appointed in of a weekly sum ordered to be paid by a husband to his wife under a separation order, (*Paquine v. Snary*, (1909) 1 K.B. 688), or of permanent alimony granted on a judicial separation *Watkins v. Watkins*, (1896) P. 222. See also notes under "Salary and Earnings" and "Pensions," *supra*.

(86) *Re Peace and Waller*, (1883) 24 Ch. D. 405; *Bursill v. Tanner*, (1884) 13 Q.B.D. 691; *McGarry v. White*, (1885) 16 L.R.I.R. 322; *Cummins v. Perkins*, (1899) 1 Ch. 16.

(87) *Hill v. Cooper*, (1893) 2 Q.B. 85; *Whitelay v. Edwards*, (1896) 2 Q.B. 48.

(88) *Brown v. Dimbleby*, (1904) 1 K.B. 28; see *Reviere on Receivers*, 1912, p. 21.

(89) *Paquine v. Snary*, [1909] 1 K.B. 688.

(90) *Re Robinson*, 27 Ch. D. 160.

(91) *Watkins v. Watkins* [1896], P. 222.

(92) *Reg v. Judge of County Court of Lincoln*, (1887) 20 Q.B.D. 167.

(93) There is no case in which a receiver has been directed to receive a sum the payment of which to the debtor is wholly contingent and dependent on the will of another person, *Reg v. Lincolnshire County Court Judge*, 20 Q.B.D. 167.

(94) *Whitaker v. Cohen*, (1893) 69 L.T. 451.

(95) *Ibid*.



**Business concern.** A receiver will not generally be appointed of a business unless such receiver is also appointed manager of the business.<sup>96</sup>

**Business of a solicitor.** But a receiver has been appointed of the profits of the business of a solicitor.<sup>97</sup>

**Books and papers.** "Where debentures charge all the property and assets of a company, including its uncalled capital, the order appointing a receiver usually directs that all books and documents relating to such property and assets be handed over to the receiver. But, if the company is wound up, the liquidator is entitled to the custody of such books and documents as relate to the management and business of the company and are not necessary to support the title of the holders of the debentures, and the Court will order the delivery of these books and documents to the liquidator, on an undertaking by him to produce them to the receiver."<sup>98</sup>

**Patent.** No receiver will be appointed over a patent which is not being worked.<sup>99</sup>

**Railway, Tramway, Ship.** Receivers have also been appointed in respect of railways,<sup>100</sup> of tramways,<sup>101</sup> and ships.<sup>102</sup>

**Theatre.** In a case where the lessees of a theatre had mortgaged the lease, a receiver was appointed, without prejudice to the prior mortgagee, to take possession of the theatre and collect the rent from the lessees, and thus obtain satisfaction of a judgment against them.<sup>103</sup>

(96) *Manchester and Liverpool District Banking Co. v. Parkinson*, (1888) 22 Q.B.D., p. 176.

(97) *Candler v. Candler*, Jac. 225. Where a receiver has been appointed of a public undertaking which is carried on by trustees or others empowered by statute, such appointment does not supersede the powers of the statute, or make the future management illegal. The management remains in the hands of the trustees or others empowered by statute to manage it. The receiver under such circumstances does no more than take the rates, tolls, and taxes, pay the expenses of the undertaking and other charges, and then pay the surplus into court. *Ames v. Birkenhead Docks*, 20 Beav. 350; and see *Carmichael v. Greenock Harbour Trustees*, (1910) A. C. 274.

(98) *Engel v. South Metropolitan Brewing Co.*, (1892) 1 Ch. 442; See also Daniell's *Chancery Practice*, 7th Ed., p. 1177.

(99) *Edwards & Co. v. Picard*, (1909) 2 K.B. 903.

(100) See Daniell's *Chancery Practice*, 7th Ed., p. 1425 and the cases referred to therein; Halsbury's *Laws of England*, Vol. XXIV, S. 684, p. 367. But a receiver appointed over the undertaking of a Railway Company has no right to receive unpaid capital. *Re Birmingham and Lichfield Junction Rail Co.*, (1881) 18 Ch. D. 155; *Re West Lancashire Rail Co.*, (1890) 63 L.T. 56.

(101) Daniell's *Chancery Practice*, 7th Ed., p. 1425 and the cases cited therein.

(102) *Ibid*; *Re Edderside*, 31 Sol. J. 744; Kerr on *Receivers*, 6th Ed., pp. 130, 131.

(103) *Cadogan v. Lyric Theatre, Limited*, (1894) 3 Ch. 338 and see Minutes of order at p. 344.

The Court may appoint a receiver over the box office receipts of a theatre, as between part proprietors<sup>104</sup>, but not by way of equitable execution.<sup>105</sup>

The Court will not order the appointment of a receiver when it is likely to prove ineffective<sup>106</sup> or destructive of the property to which it relates.<sup>107</sup> A receiver will not be appointed of an interest under a will which would be forfeited by the very fact of the appointment.<sup>108</sup>

Property likely to be destroyed by appointment of a receiver.

It is not necessary, in order to authorize the Court to appoint a receiver, that the property in respect of which he is to be appointed should be within the jurisdiction of the Court<sup>109</sup> appointing him or even within the country in which that Court is situated. In fact it need not be in any of Her Majesty's dominions, provided that a receiver could be usefully appointed.<sup>110</sup> Thus, persons have been appointed by Courts in England to manage landed property, receive the rents and profits, and convert, get in, and remit the proceeds of property and assets, where such property has been situated in British India,<sup>111</sup> Canada,<sup>112</sup> America,<sup>113</sup> China,<sup>114</sup> Ireland,<sup>115</sup> Italy.<sup>116</sup> New South Wales,<sup>117</sup> the West Indies,<sup>118</sup>

Property out of jurisdiction.

(104) *Const v. Harris*, (1824) Turn, and R. 496 (517).

(105) *Cadogan v. Lyric Theatre, Limited*, (1894) 3 Ch. 338, C.A.

(106) *Mercantile Investment and General Trust Co. v. River Plate Trust, Loan and Agency Co.*, (1892) 2 Ch. 303; *Edwards & Co v. Picard*, (1909) 2 K.B. 903, C.A.; *Re Knott End Railway Act*, 1898 (1901) 2 Ch. 8, C.A.; see *Hinton v. Galli*, (1854), 24 L.J. (Ch.) 121.

(107) *Cooper v. Reilly*, (1830) 1 Russ. & M. 560.

(108) See *Campbell v. Campbell and Davis* (1895), 72 L.T. 294.

(109) *Houlditch v. Marq. Donegal*, 8 Bligh, N. S. 301, 343; *Barkley v. Reay*, 2 Ha. 308; *Faulkner v. Daniel*, 3 Ha. 204, n.; *Re Maudslay, Sons Field*, (1900) 1 Ch. 602; *Daniell's Chancery Practice*, 7th Ed., Vol II, p. 1426.

(110) *Mercantile Investment, &c., Co v. River Plate, &c., Co.*, (1892) 2 Ch. 303.

(111) *Logan v. Princess of Coorg*, Seton, 810; *Keys v. K.*, cited in Seton on Judgment and Orders, 810, 812; 1 Beav. 425.

(112) *Tylee v. T.*, cited in Seton on Judgment and Orders, 811.

(113) *Hanson v. Walker*, cited in Seton on Judgment and Orders, 7th Ed., p. 777.

(114) *Hodson v. Watson*, cited in Seton on Judgment and Orders, 810.

(115) *Houlditch v. Marq. Donegal*, 8 Bligh, N. S. 301, 343, but see *Re Trant*, cited in Seton on Judgment and Orders, 813.

(116) *Hinton v. Galli*, 24 L. J. Ch. 121; 2 Eq. Rep. 479. Seton on Judgment and Orders, 813.

(117) *Underwood v. Frost*, Seton on Judgment and Orders, 812.

(118) Seton on Judgment and Orders, 813.

the East Indies,<sup>119</sup> Demerara,<sup>120</sup> Mexico,<sup>121</sup> Jersey,<sup>122</sup> Brazil,<sup>123</sup> Peru<sup>124</sup> and other places. In these cases a person resident in England is sometimes appointed receiver or manager, with authority to appoint an agent abroad ; <sup>125</sup> and sometimes a person abroad is appointed receiver or manager, with directions to consign or remit to some person resident in England.<sup>126</sup>

It would appear that the Courts in this country have also similar powers to appoint receivers of property situated beyond the jurisdiction of the Court appointing the receiver.<sup>126-a</sup> It cannot however be said that the Courts in India have such extensive jurisdiction as the superior courts in England have in this respect. The powers of the English Courts are based on the doctrine that those Courts act *in personam*. But in this country the power to make orders *in personam* must be considered with reference to the limitations imposed, in the case of the High Courts by their respective Letters Patent, and in the case of the Courts in the mofussil by the Code of Civil Procedure.<sup>127</sup>

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(119) ——— v. *Lindsay*, (1808) 15 Ves. 91.

(120) *Porter v. P. Seton on Judgment and Orders*, 812 ; *Burnbury v. B.*, 1 Beav. 318.

(121) *Mercantile Investment & Co. v. River Plate Trust & Co.*, (1892) 2 Ch. 303.

(122) *Smith v. Smith*, 10 Ha. App. 71.

(123) *Duder v. Amsterdams*, (1902) 2 Ch. 132.

(124) *Re Huinac Copper Mines*, W.N., 1910, 218.

(125) See ——— v. *Lindsay*, 15 Ves. 91 ; *Cockburn v. Raphael*, 2 S. & S. 453.

(126) See *Seton on Judgment and Orders*, 813, 814.

(126-a) See chapter on "Jurisdiction to appoint" where this subject is dealt with in full. See also *Hadjee Tsmal v. Hadjee Mahomed*, 21 W.R. 303 (306) = 13 B.L.R. 91. *Juggodumba Dossee v. Puddomoney Dossee*, 15 B.L.R. 318 at pp. 324, 325, 330 ; *Jairam v. Atmaram*, 4 B. 482 (484-488) and other cases cited in the chapter on "Jurisdiction to appoint."

(127) See *Woodroffe on Receivers*, Tagore Law Lecture for 1897, 2nd Ed., 1910, nn. 21-24.

## CHAPTER VIII.

### EFFECT OF APPOINTMENT.

Appointment of receiver—Primary result consists in its effect on the possession of the property.

Appointment order generally directs possession to be handed over to receiver.

Direction to tenants to attorn and pay rent to receiver.

Appointment of receiver is not always removing of the party out of possession.

Appointment of receiver operates as injunction against the parties and their representatives.

Payment of rent by tenant to landlord after notice of order of appointment.

Payment by tenant of arrears of rent.

Payment of rent in advance to owner as condition precedent to letting premises—Receiver's claim for such rent.

Payment of rent under an arrangement that the same is to be set off against debt due to tenant from landlord.

Payment of debt by debtors to the estate.

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Receiver appointed over property situate in foreign country.

Effect of appointment as regards third parties:

(i) Who are in actual possession.

(ii) Who are not in actual possession.

Application by stranger with regard to property in the possession of receiver—How dealt with by Courts.

Application for leave to proceed against receiver or property in his hands, how made—Procedure.

Rights of property not affected by appointment of receiver.

Money in hands of receiver - *Custodia legis*.

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Loss caused by receiver's default borne by the estate as between parties to the suit.

Unlawful detention of property—Damages.

Effect of appointment on the statutes of limitation.

Effect of appointment on right of set off.

Effect of appointment by way of equitable execution.

Appointment of receiver if bars subsequent appointment of administrator *pendente lite*.

Appointment of party as receiver—His privileges as party not lost.

Appointment of receiver—Security for costs.

Suit by subsequent receiver against former receiver; maintainability of.

Appointment of receiver — Primary result consists in its effect on the possession of the property.

THE primary and the most important result which the appointment of a receiver has on the property which is the subject-matter of the pending litigation is the effect which it has on the possession of such property. <sup>1</sup>

The order of appointment amounts in effect to the Court assuming control of the property; and, from the time of the order, the parties to the action are deemed to retain possession only as custodians for the Court. <sup>2</sup>

As to the effect of appointing a receiver, Justice Story says:—" In the first place, upon the appointment of a receiver of the rents and profits of real estate, if there are tenants in possession of the premises, they are compellable to attorn; and the Court thus becomes virtually, *pro hac vice*, the landlord.<sup>3</sup> In the next place, the appointment of such a receiver is generally deemed to entitle him to possession of the premises. It does not, indeed, in all cases, amount to a turning of the other party out of possession; for, in many cases, as in the case of an infant's estate, the receiver's possession is that of the infant. But where the rights are adverse in the different parties in the suit, the possession of the receiver is treated as the possession of the party who ultimately establishes his right to it. The receiver, however, cannot proceed in any ejectment against the tenants of any estate, except by the authority of the Court <sup>4</sup>. Nor will the possession of the tenants be ordinarily disturbed by the Court, where a receiver is appointed. But, although not parties to the suit, the tenants may, and will, in certain cases, be compelled to attorn to the receiver.<sup>5</sup>

In the next place, a receiver, when in possession, has very little discretion allowed him; but he must apply, from time to time, to the Court for authority to do such acts as may be beneficial to the estate. Thus, he is not at liberty to bring or to defend actions; or to let the

(1) *Murdock's case*, 2 Bland, 461; *Kesho Prashad v. Srinivas*, 13 C.L.J. 394=10 Ind. Cas. 256=38 C. 791; *Shaik Madhu v. Shaik Sahar*, 6 Ind. Cas. 177=14 C.W.N. 681. See also Chap. II, *supra*.

(2) *Peruvian Guano Co. v. Dreyfus Brothers & Co.*, (1892) A.C. 166, 187, 195. The subject-matter of this chapter may also be found dealt with in Chaps. II, IX and X "A receiver who has collected moneys due to the judgment-debtor does not hold them for the judgment-creditor. He holds them for the Court in order that the Court may decide regarding them" Per Shephard, J., in *Muthia Chetty v. Orr*, 20 M. 224 at p. 227 citing in support of the proposition, *In re Dickinson*, L.R. 22 Q.B.D. 187.

(3) *Sharp v. Carter*, 3 P. Will. 379. See *Albany City Bank v. Schermerhorn*, 9 Paige, R. 372.

(4) *Wynn v. Lord Newborough*, 3 Bro. Ch. R. 88; S.C., 1 Ves. Jr. 164.

(5) See *Insure Company v. Stebbins*, 8 Paige, R. 565.



estate; or to lay out money; unless by the special leave of the Court <sup>6</sup>. In the next place, when such a receiver is in possession, under the process or authority of the Court, in execution of a decree or decretal order, his possession is not to be disturbed, even by an ejectment under an adverse title, without the leave of the Court. For his possession is deemed the possession of the Court; and the Court will not permit itself to be made a suitor in a Court of law.<sup>7</sup> The proper and usual mode, adopted under such circumstances, is, for the party, claiming an adverse interest, to apply to the Court to be permitted to come in, and be examined *pro inter esse suo*. He is then allowed to go before the master, and to state his title, upon which he may, in the first instance, have the judgment of the master, and ultimately, if necessary, that of the Court. And, where the question to be tried is a pure matter of title, which can be tried in an ejectment, the Court, from a sense of convenience and justice, will generally authorize such a suit to be brought, taking care, however, to protect the possession by giving proper directions.<sup>8</sup>

Where a receiver is appointed, and the property is in possession of a third person, who claims a right to retain it, the receiver must either proceed by a suit in the ordinary way, to try his right to it, or the plaintiff in equity should make such third person a party to the suit, and apply to the Court to have the receivership extended to the property in his hands, so that an order for the delivery of the property may be made, which will be binding upon him, and which may be enforced by process for contempt, if it is not obeyed.<sup>9</sup> And, whenever the property is in possession of a third person, under a claim of title, the Court will not protect the officer, who attempts by violence to obtain possession thereof, his right to take possession of the property, of which he has been appointed the receiver, not being questioned."<sup>10</sup>

In *Parker v. Browning*,<sup>11</sup> Mr. Chancellor Walworth said: "It is not necessary, in any case, for the receiver to put himself in a situation where he is not entitled to the full protection of the Court, as he is under no obligation to attempt to take property out of the possession of a third person, or even out of the possession of the defendant himself, by force, and without an express order of the Court, directing him to do so. The proper course, as this Court has repeatedly decided, where the defendant is directed to deliver over his property to the receiver, under the direction

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(6) Jeremy on. Eq. Juris. B. 1, Ch. 7, s. 1 pp. 252, 253.

(7) *Parker v. Browning*, 8 Paige, R. 388.

(8) *Angel v. Smith*, 9 Ves. 338, 339; *Brooks v. Greathead*, 1 Jac & Walk, 178.

(9) *Parker v. Browning*, 8 Paige, R. 388; *Albany City Bank v. Schermerhorn*, 9 Paige, R. 372.

(10) *Ibid.* See Story's Equity Jurisprudence, 8th Ed., Vol. II, Ss. 833—833(b), pp. 37-40.

(11) *Parker v. Browning*, 8 Paige, R. 388.

of a master, is for the receiver, or the party who wishes for an actual delivery of the property, in addition to the legal assignment thereof, to call upon the master to decide, upon the examination of the defendant, and on the evidence before him, what property legally or equitably belonging to the defendant, and to which the receiver is entitled under the order of the Court, is in the possession of the defendant, or under his power and control. And it is the duty of the master to direct the defendant to deliver over to the receiver the actual possession of all such property, in such manner and within such time as the master may think reasonable. Where such a direction is given, the defendant, if he is dissatisfied with the decision of the master, must apply to the Court to review the same, or he will be compelled, by process of contempt, to comply with that decision. And if the property is in the possession of a third person, who claims the right to retain it, the receiver must either proceed by suit, in the ordinary way, to try his right to it, or the complainant should make such third person a party to the suit, and apply to have the receivership extended to the property in his hands; so that an order for the delivery of the property may be made, which will be binding upon him, and which may be enforced by process of contempt, if it is not obeyed. Where the property is legally and properly in the possession of the receiver, it is the duty of the Court to protect that possession, not only against acts of violence, but also against suits at law; so that a third person claiming the same may be compelled to come in and ask to be examined *pro inter esse suo*, if he wishes to test the justice of such claim. But where the property is in the possession of a third person, under a claim of title, the Court will not protect the officer who attempts, by violence, to obtain possession, any farther than the law will protect him; his right to take possession of the property, of which he has been appointed receiver, being unquestioned."<sup>12</sup>

No doubt it is not necessary that the receiver should take immediate possession.<sup>13</sup> Nor is he always entitled to actual and immediate possession.<sup>14</sup>

In fact unless the order of appointment authorizes the receiver to take immediate possession of the property,<sup>15</sup> he cannot take possession

(12) Per Chancellor Walworth in *Parker v. Browning*, 8 Paige, R. 388. See Story's Equity Jurisprudence, 8th Ed., Vol II, Ss. 833 - 833 (b), pp. 37-40.

(13) See *Defries v. Creed*, 34 L.J. Ch. 607. A receiver of land rarely takes actual possession; he only receives the rent (per James L. J., *Ex parte Evans*, *In re Watkins*, 1879, 13 Ch. D. 255). A receiver does not receive rents and profits by virtue of any estate or title that is vested in him; he is merely the officer of the Court to collect the rents upon the title of some persons who are parties to the action, per Chitty, J., *Vine v. Raleigh*, (1883), 24 Ch. D. 243. See Chapter XI, "Receiver's Possession."

(14) *Defries v. Creed*, 34 L.J. Ch. 607; *Dove v. Dove*, 2 Dick 617.

(15) *Morrison v. Skerne Ironworks, Ltd.*, (1889), 60 L.T. 588.

until he has completed his security; <sup>16</sup> and even after the completion of the security the receiver cannot compel delivery of possession until an order directing delivery of possession has been obtained and served on the parties.<sup>17</sup>

But, whatever may be the rights of the receiver as regards obtaining actual possession of the property, the principle holds good that, from the moment of the appointment, the possession of the parties and those claiming under them is to be deemed to be the possession of the Court.<sup>18</sup>

As a general rule the order of appointment generally contains a direction that possession of the property should be handed over to the receiver.<sup>19</sup> Such a direction is inserted whether the order of appointment is made at the trial of the action or on an interlocutory application.<sup>20</sup>

Order of appointment generally directs possession to be handed over to receiver.

The order of appointment also contains a direction to the tenants to attorn to the receiver and to pay the rent to the receiver,<sup>21</sup> but payment cannot be enforced against the tenants until the order for attornment or payment of rent has been obtained and served on them.<sup>22</sup>

Direction to tenants to attorn and pay rent to the receiver.

(16) *Defries v. Creed*, (1865) 34 L.J. (Ch.) 607; *Edwards v. Edwards*, (1876) 2 Ch. D. 291, C.A.

(17) *Dove v. Dove*, (1783) 2 Dick 617; *Ferguson v. Tadman*, (1820), cited in *Green v. Green*, (1828) 2 Sim. 394, 401, 410. See also Chapters IX and X, *infra*.

(18) See Halsbury's Laws of England, Vol. XXIV, s. 703, p. 375. Where receivers were appointed to an estate to receive but no mention of the powers conferred on the receivers was made in the order of appointment, *held* that it cannot be assumed by implication that they were appointed with all the powers allowed by O. XL, r. 1. *Hoe Hin v. Balthazar*, 8 Bur. L.T. 164. It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary, or for so long as it may be so. *Mathusri Umamba v. Mathusri*, 19 M. 120 (P.C.)=23 I.A. 28=6 Sar. P.C.J. 684.

(19) See *Hawkes v. Holland*, (1881), W.N. 128, C.A.; *Edgell v. Wilson*, (1893) W.N. 145.

(20) *Ind. Coope & Co. v. Mee*, (1895) W.N. 8. In England, such a direction may be enforced either by attachment, R. S. C., Ord. 42, rr. 7, 24; see *Mullarkey v. Donohoe*, (1885), 16 L.R. Ir. 365, or by writ of possession in the case of land, R.S.C., Ord. 47; *Hall v. Hall*, (1878), 47 L.J. (Ch.) 680, or by writ of assistance in the case of specific chattels, *Cazet de la Borde v. Othon*, (1874) 23 W.R. 110, but these writs cannot be issued unless a time has been limited within which possession must be delivered, R.S.C., Ord. 41, r. 5; *Savage v. Bentley*, (1904) 90 L.T. 641. In a foreclosure action, though the defendant may be ordered to deliver up possession to the receiver, the Court will not prejudge the action by restraining him from remaining on the premises. *Taylor v. Soper*, (1890) 62 L.T. 828.

(21) 1 Seton, Judgments and Orders, 7th Ed., p. 725; *Underhay v. Read*, (1887) 20 Q.B.D. 209, 210, C.A.

(22) *Hobhouse v. Hollcombe*, (1848) 2 De G. & Sm. 208, ...

Even as regards the parties to the suit, the appointment of the receiver does not amount to the turning out of the party in possession. Very often the Court contents itself by fixing an occupation rent against a defendant in possession of all or any part of the premises comprised in the order of appointment.<sup>23</sup>

Appointment of receiver is not always removing of the party out of possession.

The appointment of a receiver operates as an injunction against the parties to the suit and their representatives and has the effect of restraining them from receiving or in any way interfering with any part of the property comprised in the order of the appointment.<sup>24</sup>

Appointment of receiver operates as injunction against the parties and their representatives

Thus, the appointment of a receiver in an administration action deprives the executor of the right of obtaining possession of the assets<sup>25</sup> and, in such a case, the executor is also deprived of his right of retainer, except as to assets received by him before the appointment.<sup>26</sup>

A tenant, who, before he has notice of the order of appointment of receiver, pays, in good faith, the rent due to his original landlord may be excused from having to make the same payment over again to the receiver.<sup>27</sup> But, if he makes such payment to the landlord after notice, he will have to pay the rent once again to the receiver,<sup>28</sup> unless the tenant

Payment of rent by tenant to landlord after notice of order of appointment.

(23) See *Randfield v. Randfield*, (1859) 7 W.R. 651 (Eng.); *Everett v. Belding*, (1852) 22 L.J. Ch. 75; *Re Burchnall Wacker v. Burchnall*, (1893) W.N. 171. A receiver cannot distrain upon the goods of a defendant in possession who has not been constituted a tenant. *Griffith v. Griffith*, (1751) 2 Ves. Sem. 400. If after service of the order a tenant refuses to pay rent, the receiver may obtain leave to distrain (*Mills v. Fry*, 1815, 19 Ves. 277) or to bring an action for the recovery of the land (*Mansfield, Lord v. Hamilton; Hobhouse v. Hamilton*, (1804), 2 Sch. and Lef. 28), and the latter remedy is available against a defendant who retains possession under a collusive tenancy agreement at an inadequate rent. (*Comyn v. Smith*, 1823, 1 Hog. 81). If the possession by an alleged tenant has been taken after and with notice of the order, he may be brought before the Court to justify his refusal without being made a party to the action. *Reid v. Middleton*, (1823) Turn. & R. 455; see also chapters X and XI, *infra*.

(24) *Re Sartoris's Estate, Sartoris v. Sartoris*, (1892) 1 Ch. 11, 22, C.A.; *Tyrrell v. Panton*, (1895) 1 Q.B. 202, 206, C.A.; *Mahommed Zohoruddeen v. Mahommed Noorooddeen*, 21 C. 85 (91); see also chapter II, Notes 16—19.

(25) *Kirk v. Houston*, (1843) 5 I. Eq. R. 498; *Minford v. Carse*, (1912) 2 I.R. 245, 273.

(26) *Re Birt, Birt v. Burt*, (1883) 22 Ch. D. 604; *Re Jones, Calyer v. Laxton*, (1885) 31 Ch. D. 440.

(27) See Halsbury's Laws of England, Vol. XXIV, §. 706, p. 378.

(28) *Brown v. O'Connell*, (1828) 2 Hog. 81; *Walton v. Johnson*, (1848), 15 Sim. 352.



had paid rent to the landlord under compulsion of law, in which case the Court may not compel repayment to the receiver.<sup>29</sup>

The same rule applies also to the case of arrears of rent. A receiver appointed for the collection of rents is entitled to all arrears remaining unpaid at the date of the order for his appointment.<sup>30</sup> Tenants paying such arrears to their landlord before they have notice of the order will not be compelled to pay a second time to the receiver; but any party to the action who, with notice of the order, collects arrears of rent or takes securities for the amount due, may be compelled to hand them over to the receiver.<sup>31</sup>

Where the mortgagor of certain mortgaged premises let them to a tenant after receiving five months' rent in advance as a condition precedent to such letting and subsequently a receiver appointed in the mortgage suit relating to those premises sued for recovery of the same rent: *Held*, that the lessee having paid the rent in advance only as a part of his entering into the contract of hiring the premises, could not be compelled to pay it over again to the receiver.<sup>32</sup>

In the course of the judgment in the above case, the Court said:—  
“The circumstances under which he (the tenant) paid the rent in advance were not in dispute. As previous tenants had left the house without paying the rents due by them, the mortgagors made the defendant pay in the five months' rent in advance.

The receiver stood in the shoes of the mortgagees of the house. Whether it was open to him or them to claim for rent is doubtful.<sup>33</sup>

Assuming that he could, the question remains whether he could make the defendant pay to him rents for months for which the defendant had already paid in advance. In support of the contention that he

(29) See *Underhay v. Read*, (1887) 20 Q.B.D. 209, C.A.; *Church Temporalities (Commissioners) of Ireland v. Harrington*, (1883) 11 L.R. Ir. 127. The rule in *Edwards v. Edwards*, (1876) 2 Ch. D. 291 that a receiver is not duly constituted until he has given security only applies to cases where questions arise as to his title against third parties. Therefore the appointment of a receiver of rents of land at the instance of a judgment-creditor, though conditional on the receiver giving security, operates as an immediate delivery of the land in execution.

(30) *Codrington v. Johnstone*, (1838) 1 Beav. 520, 524; *Abbott v. Stratton*, (1846) 9 L. Eq. R. 233, 243.

(31) *Hollis v. Hedges*, (1853) 2 L. Ch. R. 370; *Russell v. Russell*, (1853) 2 L. Ch. R. 574.

(32) *Toon Chan v. P.O. Sen*, 24 Ind. Cas. 693 = 7 Bur. L.T. 139.

(33) Vide *Notes to Mop v. Gallimare*, in *Smith's Leading Cases*.



could do so, the cases of *De Nicholls v. Saunders*,<sup>34</sup> and *Cook v. Guerra*,<sup>35</sup> were relied on, but those cases are distinguishable from the present inasmuch as according to the contracts in those cases the rents were not due until the expiry of certain periods. In the present case the lessor made it a condition of her letting the premises that rents for five months should be paid in advance. There is no provision of law forbidding such a contract, and when such is the contract, the basis of the reasoning on which the above-mentioned cases were decided is absent.

If a lessee pays his rent before it is due it may well be said that he does not pay in fulfilment of an obligation upon him, and that such payment must be regarded as an advance to the lessor with an agreement that on the day when the rent becomes due such advance shall be treated as a fulfilment of the obligation to pay rent. But when it is part of the contract, as it was in the present case, that the lessee should pay rent in advance, and the lessee pays in advance, he does so in fulfilment of an obligation under the contract.

In such a case S. 50 of the Transfer of Property Act, in my opinion, protects him from having to pay over again to a person who may subsequently become entitled to the rents or profits of the property leased.

On these grounds, I think the decision of the Small Cause Court was erroneous in law."<sup>36</sup>

Section 17 of the Presidency Insolvency Court only bars a suit by a creditor against the Official Assignee without the leave of the latter and is inapplicable to a suit by a tenant to set aside a distraint by an agent of the Official Assignee on the ground that no rent was due to the insolvent in consequence of an arrangement between him and the insolvent that the rent due by him should be applied in discharge of a debt due to him by the insolvent and that he accordingly so applied it.<sup>37</sup>

Such a suit cannot be regarded as a suit to enforce his right to set off the rent against his debt which could not be instituted in a Revenue Court.<sup>38</sup>

When a receiver has been appointed over an estate, persons owing debts to the estate occupy a position which, in several respects, is analogous to that of the tenants stated above. The order of appointment generally directs

Payment of rent under an arrangement that the same is to be set off against debt due to tenant from landlord.

Payment of debt by debtors to the estate.

(34) (1870) L.R. 5 C.P. 589; 39 L.J.C.P. 297; 22 L.T. 661; 18 W.R. 1106 (Eng).

(35) (1872) L.R. 7 C.P. 132; 41 L.J.C.P. 89; 26 L.T. 97; 20 W.R. 367 (Eng).

(36) *Toon Chan v. P.C. Sen*, 24 Ind. Cas. 693 = 7 Bur. L.T. 139.

(37) *Ramalinga Chetti v. P.B. Anantachariar*, 24 M.L.J. 350.

(38) *Ramalinga Chetti v. P.B. Anantachariar*, 24 M.L.J. 350.

such debtors to pay their debts to the receiver.<sup>39</sup> Refusal or disregard of such a direction may be viewed as contempt of Court.<sup>40</sup> The fact that there exists no person in whose name an action can be brought for enforcing payment of the debt is no reason why the debtors should not pay the debt to the receiver.<sup>41</sup>

Sometimes it so happens that, after the appointment of a receiver, the property over which the appointment is made increases by way of accretion. In such cases it has been held that the accretion also vests in the receiver.<sup>42</sup> This point was considered in a recent case by the Calcutta High Court. In the course of the judgment in that case their Lordships Mookerjee and Teunon, JJ., said :—

“The question, therefore, arises, whether when a Receiver has been appointed by a Court of competent jurisdiction in respect of the subject-matter of litigation, he is entitled to take possession of and deal with lands which by accretion may become part of the original tract. Now it may be conceded as a general rule that a receiver takes no title to property, acquired by the person formerly in possession, subsequent to his appointment. In support of this proposition reference may be made to “Alderson on Receivers,”<sup>43</sup> where it is pointed out that property acquired by a party to the suit, subsequent to the institution of the proceedings in which the Receiver is appointed, does not pass to the Receiver, and the case is stronger in respect of property acquired subsequently to the appointment. This is well illustrated by the case of *Harviman v. Woburn*.<sup>44</sup> In that case a mortgage was granted to cover after-acquired property, but it was provided that the mortgage lien would not attach unless possession was taken by the mortgagee. In a suit to enforce the security a Receiver was appointed, who took possession of the original property: before the Receiver could take possession of the after-acquired property, the mortgagor became insolvent, with the result that such property vested in the assignee in insolvency. It was ruled that the Receiver in the mortgage suit had not acquired any title, as he had failed to take possession, and consequently, the after-acquired property did not vest in him.<sup>45</sup> But

(39) See Halsbury's Laws of England, Vol. XXIV, S. 707, pp. 378, 379.

(40) *Wood v. Hitchings*, (1840) 2 Beav. 289; *Acheson v. Hodges*, (1841) 3 I. Eq. R. 516; *Kirk v. Houston*, (1843) 5 I. Eq. R. 498; *Croshaw v. Lyndhurst Ship Co.*, (1897) 2 Ch. 154, 160, 162.

(41) See Halsbury's Laws of England, Vol. XXIV, S. 707, p. 379.

(42) *Shaik Madhu v. Shaik Sahar Ali*, 6 Ind. Cas. 177 (178) = 14 C.W.N. 681.

(43) Section 513.

(44) (1895) 163 Mass. 85; 39 N. E. 1004.

although the general rule is as we have stated it, the case of accretion to property vested in the Receiver, forms an exception thereto and this view may be justified on readily intelligible grounds.<sup>46</sup>

"It is an elementary principle that to the owner of the original property belong those imperceptible and insensible additions to his lands which when once acquired become in all respects part of the original tract, and the title thereto is held subject to the same encumbrances, and with the benefit of the same rights as his lands to which accretion is made; and this is so, where the accretions are due to natural causes alone or to a combination of both natural and artificial influences. It is not necessary for us to investigate the rationale of the rules as to property in accretion, whether it is based on considerations of public policy or as a compensation for risk of loss. One position is quite clear. The whole doctrine of accretion is based upon the theory that from day to day, week to week, and month to month, a man cannot see where his old line of boundary was by reason of the gradual and imperceptible accretion of alluvium to his land. Consequently, although after a certain period we may see that a body of land, however considerable, has accreted to the original land, yet if the steps by which that land is formed are steps gradual and in the ordinary course of nature and happening from time to time we cannot perceive the change from step to step. The only rational rule which we can adopt under such circumstances is that the land so gradually and imperceptibly accreted does belong to the owner of the original land and he is entitled to possession of it as his property. If it is once admitted, so far as the original owner is concerned, that gradual accretion of land from water should belong to him, the inference in the case of the Receiver who holds the property as the custodian till the title of the true owner is established, becomes obvious. If the *maxim*, "*Accessorium non ducit sed sequitur suum principale*,"<sup>47</sup> upon which the doctrine of accession is based, is applicable to the original owner, there is no intelligible reason why it should not apply equally to the Receiver who holds possession for his ultimate benefit. In fact if the contrary view were taken, considerable embarrassment might result. Two extensive classes of cases as is well known, fall within the operation of the doctrine of accession; first, that in which the owner of a thing acquires a right of property in its organic products as in the young of animals,

(45) A similar principle was applied in *Gahert v. Olcott*, (1893) 22 S. W. 286 and *Goff v. Bonnett*, (1865) 31 N. Y. 9; 88 Am. Dec. 236.

(46) Per Mookerjee and Teunon, JJ. in *Shaik Madhu v. Shaik Sahar Ali*, 6 Ind. Cas. 177 (178)=14 C.W.N. 681.

(47) See Co. Litt. 152-A; Broom's Legal Maxims, 365.

fruit of trees, and the alluvium or deposit on lands and, secondly, that in which one thing becomes so closely connected with and attached to another, that their separation cannot be effected at all, or at least not without injury to one or other of them. In both these classes of cases, jurists have held that the owner of the principal thing acquires also the accessory connected therewith.<sup>48</sup> Now take as an illustration the case in which a Receiver has been appointed of mortgaged property subject to alluvion or of a garden in which there are fruit trees, or of a partnership business relating to a dairy farm; if it is held in each of these cases that the Receiver is entitled to the property precisely in the condition in which it stands at the moment of his appointment, the very object of the appointment of a Receiver may be completely defeated. In the case of the mortgage property, the mortgagee is entitled to enforce his security against the original lands as well as the accession. In the case of the garden, the claimant is entitled not merely to the trees as they stand, but also to their fruits: and in the case of the farm, the plaintiff may similarly be entitled to the benefit of an increase of the live stock. To take again as an illustration the case of a Receiver appointed in respect of a joint family property in a suit for partition, if part of the property consists of money due from debtors, the Receiver ought to be held entitled to realise not merely the sum due for principal and interest at the time when his appointment was made, but also interest which may have accrued due subsequently as interest on money is accessory to the principal and must, in the language of Roman jurists, "follow its nature." In our opinion, it is fairly clear that, when a Receiver has been appointed in respect of the principal subject-matter of the dispute, the accessory follows the principal unless some special circumstance is established. Hence we must consequently hold that the Receiver became entitled not only to the subject-matter of the proceeding, but also to the accreted land."<sup>49</sup>

When a receiver is appointed over property situate in a foreign country, he must take the necessary steps to obtain possession in accordance with the law prevailing in such foreign country. According to the practice of Courts in England, the Court will not attempt to put its officer into possession of foreign property. But it may direct an inquiry as to the best means of obtaining possession<sup>50</sup> and make any necessary order

(48) Mackelvey on Roman Law 155 cited in 6 Ind. Cas. at p. 179.

(49) *Madhu v. Sahar Ali*, 6 Ind. Cas. 177 at pp. 178, 179=14 C.W.N. 681. (Per Mookerjee and Teunon, JJ.)

(50) *Houlditch v. Donegal (Marquis)*, (1834) 8 Bli. (N.S.) 301, H.L.



on a party residing within its jurisdiction, since the Court has jurisdiction to act *in personam*.<sup>51</sup>

**Effect of appointment as regards third parties:**

(i) Who are in actual possession;

(ii) who are not in actual possession.

It has been broadly laid down that, as against a stranger to the action who is in actual possession, the appointment of a receiver is of no effect.<sup>52</sup>

But a stranger who is not in possession at the date of the appointment, though his rights are not affected, will not be allowed to assert them without the leave of the Court<sup>53</sup>, unless the order is made expressly without prejudice to his rights.<sup>54</sup>

The appointment of a receiver by the Court and his possession of the property has the effect of suspending the right of all other persons, even those claiming by a paramount title, to interfere with such property without the leave of the Court, unless their rights are expressly reserved by the order appointing the receiver.<sup>55</sup>

**Application by stranger with regard to property in the possession of receiver — How dealt with by Courts.** When an application is made by a stranger to enforce his alleged rights in the property over which a receiver is appointed, the Court will examine the claim, and, either give effect to it by an order in the action, or, if this is impracticable, allow any necessary proceedings to be taken outside the action.<sup>56</sup>

Thus a judgment-creditor may, if an application be made by him, be granted either an order on the receiver for payment of what is due to him<sup>57</sup> or have leave to levy execution<sup>58</sup> and, if necessary, to take proceedings in ejectment<sup>59</sup>, notwithstanding the possession of the receiver.<sup>60</sup>

(51) *Re Huinac Copper Mines, Ltd., Matheson & Co., v The Co.*, (1910) W.N. 218. As to the jurisdiction of Courts to act *in personam* See Chap. IV "Jurisdiction to appoint."

(52) *Davis v Marlborough (Duke)*, (1819) 2 Swan. 108, 116, 118. See also Halsbury's Laws of England, Vol. XXIV, 1912, p. 379.

(53) *Johnes v. Cloughton*, (1822) Jac. 573; *Hawkins v. Gathercole*, (1852) 1 Drew 12, 17.

(54) *Davis v. Marlborough (Duke)*, (1819) 2 Swan. 108 at p. 115.

(55) See Riviere on Receivers, 1912, p. 86.

(56) *Angel v. Smith*, (1804) 9 Ves. 335; *Brooks v. Greathed*, (1820) 1 Jac. & W. 176, 178; See also *Mahomed Medhi v. Zoharra*, 17 C. 285; *E. D. Sassoon v. Moosaji*, 9 Ind. Cas. 485.

(57) *Lewis v. Zouche (Lord)*, (1828) 2 Sim. 388; *Smith v. Great Eastern Rail Co., Ex parte Thurgood*, (1868) 18 L. T. 18.

(58) *Russell v. East Anglian Rail Co.*, (1850) 3 Mac. & G. 104, 125.

(59) *Townsend v. Somerville*, (1824) 1 Hog. 99; *Lees v. Waring*, (1825) 1 Hog. 216.

(60) See Halsbury's Laws of England, Vol. XXIV, 1912, p. 383.



An applicant for leave to bring an action or to proceed against property in the hands of the receiver need not show a clear legal right; if the Court is satisfied that there is really a question to be tried, leave may be granted.<sup>61</sup>

The application to the Court to proceed by action against the receiver or the property in his hands should be made in the action in which the receiver was appointed, and not by independent proceedings.<sup>62</sup> The fact that the claim is against the receiver for acts in excess of his authority does not affect the proceedings in this respect.<sup>63</sup>

Application for leave to proceed against receiver or property in his hands, how made—Procedure.

Rights of property not affected by appointment of receiver.

A receiver is appointed on behalf of all<sup>64</sup> parties to the action, and not of one party only. "The appointment of a receiver does not in any way affect the right to the property over which he is appointed. The Court, in an action for a receiver, deals with the possession only, until the right can be determined, if the right is the matter in dispute between the parties, or until the incumbrances have been cleared off, if the appointment has been made at the instance of an incumbrancer."<sup>65</sup>

(61) *Lane v. Capsey*, (1891) 3 Ch. 411; *Empringham v. Short*, (1844) 3 Hare, 461.

(62) *Smith v. Effingham (Earl)*, (1839) 2 Beav. 232; *Russell v. East Anglian Rail Co.*, (1850) 3 Mac. & G. 104; *Kamatchi Ammal v. Sundaram Ayyar*, 26 M. 492.

When a party aggrieved at the conduct of a receiver, he should seek redress against the receiver in the proceeding in which he was appointed. If separate proceedings be taken against him, either in that Court or elsewhere, they should be with the leave of the Court under whose authority the receiver was acting. *Kamatchi Ammal v. Sundaram Ayyar*, 26 M. 492. In the course of the judgment their Lordships Subramania Ayyar and Benson, JJ., said:—"Though the litigation has come to an end and the property has been handed over by the receiver to the party entitled there is no allegation that the receiver has been discharged from his office by the Court and we must proceed on the assumption that he is still accountable to the Court as receiver.

"As a receiver is but an officer of the Court, acting within the limits of the authority assigned to him for and on behalf of the Court it follows that, ordinarily, the party feeling aggrieved by his conduct as receiver should seek redress against him in the very proceeding in which he was appointed receiver and that any separate proceedings taken against him either in that Court or elsewhere should be with the leave of the Court under whose authority the receiver was acting. (*Scarle v. Choat*, L.R. 25 Ch. D. 723; *Miller v. Ram Ranjan Chakravarti*, 10 C. 1014 and *Kabilaso Koer v. Raghu Nath Sakan Singh*, 18 C. 481). The case strongly relied on by the appellant's vakil (*Aston v. Heron*, 2 M. & K. 396) itself lays down the general principles which warrant the above conclusions." Per Subramania Ayyar and Benson, JJ., in *Kamatchi Ammal v. Sundaram Ayyar*, 26 M. 492 (493).

(63) *Scarle v. Choat*, (1884) 25 Ch. D. 723; see *General Share and Trust Co. v. Wetley Brick and Pottery Co.*, (1882) 20 Ch. D. 260, 267, C.A.

(64) *Davis v. Duke of Marlborough*, 1818, 2 Swans 118; 36 E.R. 559.

(65) Kerr on Receivers, p. 160. See Encyclopædia of the Laws of England, Vol. XII, p. 392

The object of the appointment of the receiver is not to divest a rightful owner of the title but to protect the property by taking possession.<sup>66</sup>

Where the rights of a party are established, the receiver will be treated as his receiver.<sup>67</sup>

Moneys in the hands of a receiver are not in *custodia legis* in the same way as if they were in the hands of a sequestrator, but they are assets in the hands of a receiver for the benefit of all parties interested, the receiver being in the same position as an executor.<sup>68</sup>

Where a receiver has been appointed over property in the possession of a lessee, the landlord cannot distrain for rent without the previous sanction of the Court.<sup>69</sup>

So also distraint for poor rate cannot be levied over property in the possession of receiver, without the leave of the Court being first obtained.<sup>70</sup>

Similarly, a judgment-creditor cannot proceed by way of attachment of property over which a receiver is appointed.<sup>71</sup>

(66) Beach on Receivers, Ss. 209, 221.

(67) *Boehm v. Wood*, 1823, Turn. & R. 332; 37 E.R. 1128; See the same case cited by Chandavarkar, J. in *N. C. Macleod v. Kissan Vithal*, 30 B. 250 (255) = 6 Bom. L.R. 495.

(68) *In re Hoare*, *Hoare v. Owen*, (1892) 3 Ch. 94; See also Chap. XI "Receiver's possession" note (2) and the cases cited therein; as to the nature of the possession of the Official Assignee see *Ramalinga v. P.B. Ananthachariar*, 24 M.L.J. 350.

(69) See *Russell v. East Anglian Rail Co.*, (1850) 3 Mac. & G. 104 at p. 118; *Sutton v. Rees*, (1863) 9 Jur. N. S. 456; *General Share and Trust Co. v. Wetley, etc. Co.*, (1887) 20 Ch. D. 260 at p. 261, C. A. A landlord whose rent is in arrears may be granted either an order on the receiver for payment out of moneys received by him, (*Balfe v. Blake*, 1850, 1 L. Ch. R. 365), or leave to distrain (*Russell v. East Anglian Rail Co.*, 1850, 3 Mac. & G. 104, 118), or bring a suit for ejectment (*Morris v. Baker*, 1903, 73 L.J. Ch. 143), or re-enter (*General Share and Trust Co. v. Wetley Brick and Pottery Co.*, 1882, 20 Ch. D. 260, C. A.), or leave generally to take such proceedings as he may be advised (*Walsh v. Walsh*, 1839, 1 L. Eq. R. 209). If the goods and chattels liable to distress have been sold by the receiver appointed in an administration action, the landlord may obtain an order for payment out of the proceeds of sale, provided he has asserted his right to distrain prior to sale (*Russell v. East Anglian Rail Co.*, 1850, 3 Mac. & G. 104), but not otherwise (*Sutton v. Rees*, (1863) 9 Jur. N. S. 456; and a landlord who alleges that the lease has been forfeited for breach of covenant may be allowed to continue ejectment proceedings against the receiver, notwithstanding that they were commenced without the leave of the Court. *Gowar v. Bennett*, (1847) 9 L.T.O. S. 310.

(70) *Re British Fullers' Earth Co., Ltd.*, *Gibbs v. The Co.*, (1901) 17 T.L.R. 232; *De Montmorency v. Pratt*, (1849) 12 L. Eq. R. 411.

(71) *Russell v. East Anglian Rail Co.*, (1850, 3 Mac. & G. 104 (118).

The fact that the judgment was obtained even before the appointment of the receiver will not make any difference in this respect.<sup>72</sup>

So also money in the hands of receiver cannot be attached in execution of a decree, without the previous leave of the Court that appointed the receiver.<sup>73</sup>

Although property over which a receiver is appointed is actually attached and seized in execution of a decree, the order of appointment will operate as a release of the attachment.<sup>74</sup>

Even proceedings under the Land Acquisition Act may not, without leave of the Court, be commenced or, if commenced, be continued, with regard to property in the hands of the receiver.<sup>75</sup>

But, as a general rule, if an application be made to the Court, leave will be granted to take the necessary proceedings for the acquisition.<sup>76</sup>

Loss caused by receiver's default borne by the estate as between the parties to the suit.

Where loss arises from the default of a receiver appointed by the Court, it must, as between the parties to the suit, be borne by the estate.<sup>77</sup>

Unlawful detention of property—Damages.

Where property has been detained under such circumstances as to give a right to damages, such right is not lost by the appointment of a receiver.<sup>78</sup>

The appointment of a receiver will not prevent time running against a stranger to the suit in respect of demands against the estate over which the receiver has been appointed,<sup>79</sup> but it will prevent time running against a suitor in favour of stranger. Because, in contemplation of law, for purposes of limitation, the possession of the receiver is the possession of the suitor, and time cannot run against a person in possession.<sup>80</sup>

(72) *Ames v. Berkenhead Docks' Trustees*, (1855) 20 Beav. 332.

(73) *De Winton v. Brecon Corporation*, (1860) 28 Beav. 200. See Chapter on "Interference with receiver's possession—Contempt of Court."

(74) See *Morrison v. Skerne Ironworks, Ltd.*, (1889) 60 L.T. 588.

(75) See *Tink v. Rundle*, (1847) 10 Beav. 318.

(76) See *Lees v. Waring*, (1825) 1 Hog. 206.

(77) *Hutchinson v. Lord Massarene*, (1811) 2 Ball. & B. 49. See Chapter XIV on "Receiver's Accounts." See also *Muthia Chetti v. Orr*, 20 M. 224, F.B.; on appeal from *Orr v. Muthia Chetti*, 17 M. 501.

(78) *Dreyfus v. Peruvian Guano Co.*, (1889) 42 Ch. D. 66.

(79) *Anon.*, (1737) 2 Atk. 15; West, temp. Hardwicke, 299.

(80) *Wrixon v. Vize*, (1842) 3 Dr. & W., p. 123.

When a receiver is appointed on behalf of an incumbrancer, such appointment will prevent the time running against such incumbrancer.<sup>81</sup>

Payments made by a receiver may be good payment under S. 20 of the Limitation Act and will operate to save limitation; but this will only be so if, under the circumstances of his appointment, the receiver is the agent of the debtor,<sup>82</sup> and he is authorised to make the payments.<sup>83</sup>

In the case of *Chinnery v. Evans*,<sup>84</sup> the Lord Chancellor said:—  
 “The next point raised in argument was this, whether payment made by the receiver appointed under the statute can be considered as payment made by the person liable to pay, or his agent. Upon that point I think no reasonable doubt can be entertained, that under the statute the receiver in the receipt of the rents of the estate is, in point of fact as well as of law, the receiver of the mortgagor, the owner of the estate subject to the mortgage, and that any payment made by the receiver in pursuance of the order, is payment in law by the legal agent of the person liable to pay.”<sup>85</sup> In the same case<sup>86</sup> Lord Cranworth said: “The payments in this case were not payments by a stranger, for though a receiver appointed under the Statute, is an officer of the Court, yet he

(81) *Chinnery v. Evans*, (1864) 11 H.L.C. 115; *Penney v. Todd*, (1878) W.N. 71. Where an application to execute a decree for possession of mortgaged land with profits was made more than three years after the decree, and the only explanation pleaded was the payment out of Court to the decree-holder of money collected by a receiver appointed in the course of the suit and before the decree, *held* that such payment could not be regarded as payment in execution of the decree, though the payment was made in consequence of the decree, and that there having been no step in aid of execution taken within three years before the application, it was barred by limitation. *Appasami Naicken v. Joth Naicken*, 22 M. 448. A banking firm consisted of several partners, some of whom were minors. Among the assets of the firm was a decree against one A. In a suit between the partners, a Receiver with full powers to realize debts due to the firm was appointed: *Held*, that the decretal debt vested in the Receiver on the date when he was appointed and from that date onwards he was competent to give a discharge; that, when the debt had vested in the Receiver, the minority of one of the decree-holders ceased to have any importance; for the rights of the minor, no less than the rights of the majors, were all absorbed by the Receiver, and an application for execution made more than three years after the appointment of the Receiver was barred. *Raj Kumar Giriya Nandan v. Kanhiya Prasad*, 20 Ind. Cas. 701 = 18 C.W.N. 138.

(82) *Re Hale*, (1899) 2 Ch. 107. But see also *Baij Nath Ram v. Hem Chunder Bose*, 10 C.W.N. 959 (1961).

(83) *Whitley v. Lowe*, (1858) 25 B. 421 (Amer.); *Re Hale*, *supra*; see also Chapter XI “Receiver’s possession” Note (18).

(84) 11 H.L.C. 115.

(85) See the judgment of Jenkins, C. J., in *Annapagauda Tammangauda v. Sangadyapa*, 3 Bom. L.R. 817 = 26 B. 221.

(86) *Chinnery v. Evans*, 11 H.L.C. 115.

is certainly no stranger to the mortgagor, but a person paying for him and on his account what he is bound to pay."<sup>87</sup>

In a recent case the Calcutta High Court said that a receiver appointed in an administration suit instituted by a creditor of a deceased person against his executor, is not an agent of the executor. He is the agent and the officer of the Court.<sup>88</sup>

But, when, in such a suit, another creditor of the estate applied to rank as such and the receiver submitted a statement in the presence of the executor admitting the debt due to the applicant, but the Court, after some time, directed the applicant to bring a fresh suit; but on the suit being instituted he was met with the plea that the claim was barred by limitation; *held*, that, in the face of the admission made in his presence, the executor was estopped from setting up the statute of limitation as a bar.<sup>89</sup> In any case, S. 14 of the Act applied, and the time during which the plaintiff was *bona fide* prosecuting his claim in the administration suit, should be excluded, in computing the period of limitation.<sup>90</sup>

A debtor who has a right of set-off against a creditor by reason of a debt owing to him by such creditor cannot claim to exercise such right on the appointment of a receiver of such debt by way of equitable execution on behalf of another creditor of the debtor.<sup>91</sup>

So also a tenant sued for rent by a receiver appointed over the estate of his landlord cannot set off a debt owing by the landlord to him.<sup>92</sup>

The appointment of a receiver by way of equitable execution of an interest in land which can be reduced to possession gives the judgment-creditor a charge upon such land as from the date of the appointment<sup>93</sup>, whether the receiver is appointed conditionally on giving security or not. It would however be otherwise if the interest in land be not capable of being reduced to present possession.<sup>94</sup>

(87) Per Jenkins, C.J., in *Annapagauda Tammangauda v. Sangadyapa*, 3; Bom. L. R. 817=26 B. 221.

(88) *Baij Nath Ram v. Hem Chunder Bose*, 10 C.W.N. 959.

(89) *Ibid.*

(90) *Ibid.*

(91) *Ex parte Peak Hill Goldfields, Ltd.*, (1909) 1 K. B. 430. But see also *Ramalinga Chetti v. P. B. Anathachariar*, 24 M L J. 350, cited *supra*.

(92) *Mullarkey v. Donohoe*, (1885) 16 L.R. Ir. 365.

(93) *Hatton v. Haywood*, (1874) L.R. 9 Ch. 229; *Anglo-Italian Bank v. Davies*, (1878) 9 Ch. D. 275.

(94) *Ex parte Evans*, (1879) 13 Ch. D. 252. See also *Reviere on Receivers and Managers*, 1912, p. 91. The appointment of a receiver of such an interest will consequently



But the appointment of a receiver by way of equitable execution does not, if there is no money of the judgment-debtor in the hands of the receiver, or any interest of the judgment-debtor which can be sold, prevent the judgment-creditor from applying to have the judgment-debtor adjudged insolvent in respect of the judgment-debt.<sup>95</sup>

Appointment of receiver if bars subsequent appointment of administrator *pendente lite*.

The appointment of a receiver by one Court will not prevent the appointment of an administrator *pendente lite* in another Court on the application of a person not a party to the suit.<sup>96</sup>

But the appointment of a receiver may however constitute him the proper person to take out letters of administration to the deceased person over whose property he is appointed.<sup>97</sup>

Appointment of party as receiver. His privileges as party not lost.

The appointment of a party to the suit as receiver, or receiver and manager, will not deprive him of any privileges which he may have as a party to the suit.

Appointment of receiver—Security for costs.

The appointment of a receiver over the property of a person will not render such person liable to give security for costs of the suit.<sup>99</sup>

Suit by subsequent Receiver, against former Receiver, maintainability of.

Subsequent receivers cannot maintain a suit against former receivers to recover funds which they allege ought to have been realized and accounted for by the former receivers.<sup>99-a</sup>

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constitute the judgment-creditor on whose application he is appointed a secured creditor within the meaning of the Insolvency Law. (*Hatton v. Haywood, supra*). Such creditor, will not, however, take priority over a receiver appointed in bankruptcy before the appointment of the receiver. *Salt v. Cooper*, (1880) 16 Ch. D. 544.

(95) *Re Bond*, (1911) 2 K. B. 988.

(96) *Tichborne v. Tichborne*, (1869) L.R. 1 P. & M. 730; *In bonis Evans*, (1890) 15 P.D. 215.

(97) *In bonis Mayer*, (1873) L.R. 3 P. & M. 39; *In bonis George Moore*, (1892) P. 145.

(98) *Scott v. Platel*, (1847), 2 Ch. p. 230.

(99) *Dartmouth Harbour Commissioners v. Mayor of Dartmouth*, (1886) 55 L.J.Q. B. 483.

(99-a) *K. B. Dutt v. Shamal Dhone Dutt*, 24 Ind. Cas. 768=41 C. 92.

## CHAPTER IX.

### PRACTICE AND PROCEDURE AS TO APPOINTMENT.

Two methods of appointing receivers.

- (i) Where it is sought for as the main object of the action.
- (ii) Where it is sought for merely as an auxiliary remedy.

Procedure in the first case.

Procedure in the second case.

Application by plaintiff and by defendant - A difference.

Parties to the application.

*Ex parte* application for appointment of receiver.

General rule - Receiver not appointed on *ex parte* application except under certain special circumstances.

Certain exceptional cases in which *ex parte* applications for appointment of receivers were granted.

- (i) Where it is necessary to thwart the defendant's efforts to commit fraud.
- (ii) Insolvency.
- (iii) Where defendant has withdrawn from the jurisdiction of the Court in order to prevent service of process on him.
- (iv) Where notice will jeopardize the delivery of the property to the receiver.
- (v) Where giving notice will imperil the property over which receiver is sought to be appointed.
- (vi) Where such property is of a kind which may be easily put out of the reach of the Court.
- (vii) Other miscellaneous exceptions.

English Law and practice as to *ex parte* applications.

Indian practice regarding the same.

Interim order of appointment

Appointment of receiver by Court of its own motion.

- (i) English practice.
- (ii) Indian Law.

Undertaking as to damages required from plaintiffs before granting order for appointment—English practice.

Terms imposed on defendant as a condition of withholding order.

Application, whether made in open Court or Chambers.

- (i) English Law.
- (ii) Indian Law.

Form of application and procedure thereon—Affidavit—English and Indian Law and practice.

Dismissal of action unless the Court form a favourable opinion on the merits.

Nature and requirements of affidavit in support of application for receiver.

Facts need not appear in pleadings—Affidavits will be sufficient.

Allegations in the affidavits should be distinct and precise—General allegations not sufficient.

Application should not contain scandalous matter.

Affidavits must state facts in support of application—Statement of mere legal conclusions not sufficient.

Imperfections in application which are not in material particulars no bar to appointing receiver.

Objections of a merely formal nature not allowed to be a bar.

Application need not specifically ask for receivership.

Only facts showing the necessity for the same should be stated.

Court will grant appropriate relief, whatever the application asks for.

Defendant's statement, effect of, on plaintiff's application for receivership

Application by plaintiff suing on behalf of a class—Objection by a member of the class—Procedure.

Application for appointment, when can be made.

Practice as to renewal and re-hearing after order of appointment—Additional evidence.

Renewal of application before another Judge.

Extension of receivership—Practice.

(i) For the protection of other interests in the property comprised in the original receivership.

(ii) For the purpose of getting hold of other property of the defendant.

(iii) For the purpose of avoiding conflict of duties between different receivers.

(iv) For the purpose of avoiding conflict of jurisdiction between different Courts.

Object of such extension.

Effect of such extension.

Form of order appointing receiver.

Construction of order appointing receiver.

An order construed as an order of appointment of receiver

Order in the alternative

Permanent receiver of endowed property.

THERE are two methods by which a receiver may be appointed by

#### Two methods of appointing Receivers.

(i) Where it is sought for as the main object of the action.

Civil Courts. Sometimes a receiver may be appointed as the main object of the action. In such a case the appointment will be the chief relief prayed for by the plaintiff. This is only allowed in exceptional cases, as, when it is necessary to protect the estates of infants or

lunatics or other incapacitated persons,<sup>1</sup> or when some special case of urgency arises.<sup>2</sup>

(1) See Kerr on Receivers, p. 3; Bennett on Receivers, p. 3.

(2) See, *Ex parte Mountfor*, 15 Ves. 445; High on Receivers, S. 83, p. 109.

(ii) Where it is sought for merely as an auxiliary remedy.

The second and the method more usually adopted is to ask for the appointment of a receiver during the pendency of a suit, the main object of which is something else.

In the first case the proper procedure is to file a plaint or an original petition, stating the special circumstances that necessitate the appointment of a receiver, and claiming such appointment as the main or one of the main reliefs to be granted by the Court.

In the latter case, the plaintiff after the institution of the suit, may make a motion, or present an interlocutory application for such appointment, supported by an affidavit stating the circumstances that call for the appointment of a receiver by the Court. The defendant may also make a similar application after filing his written statement.<sup>3</sup>

No doubt it is open both to the plaintiff and the defendant to ask for the appointment of a receiver pending a suit, and the Code of Civil Procedure does not make any difference as regards the application by the plaintiff or the defendant. But, where the defendant asks for the appointment of a receiver, his claim to relief must arise out of the plaintiff's cause of action, or at least be incidental to it.<sup>4</sup>

(3) See *Sargeant v. Read*, 1 C.D. 600. See also the judgment of Chitty, J., in *Hick v. Lockwood*, [1883] W.N. 48.

(4) Thus in a suit for dissolution of partnership and accounts, the defendant may move for the appointment of a receiver in the suit instituted by plaintiff. *Sargeant v. Read*, 1 Ch. D. 60. So also, in a suit for partition the defendant may apply for the appointment of a receiver for the protection of the property. *Porter v. Lopes*, 7 Ch. D. 358. If the relief sought by a defendant is not connected with the subject-matter of the plaint the defendant must, if he desires a receiver, institute an action of his own for such purpose. *Pana Seene v. Ana Mahalingam*, 8 Ind. Cas. 1191. Rule 1 of Order XL of the Code of Civil Procedure, does not empower the Court to appoint a receiver of properties which cannot be dealt with by the Court in the suit. In a recent case in the Madras High Court their Lordships Sundara Aiyar and Sadasiva Aiyar, JJ. said: "The plaintiff in his plaint sued to recover the properties in Schedule A appended to it. When he put in his application for the appointment of a Receiver, he appended another schedule to it, which he called B. The affidavit also stated that the suit was for the recovery of the properties in schedule A. It seems to be fairly clear that the properties in Schedule B were not part of those included in Schedule A to the plaint. There is nothing in the plaint which can be taken to make the properties in Schedule B appended to the receiver petition the subject-matter of the suit. We cannot agree with the learned Counsel for the respondent that Rule 1, Order XL, of the Code of Civil Procedure, empowers the Court to appoint a Receiver, of properties which cannot, in any way, be dealt with by the Court in the suit. A Receiver, therefore, cannot be appointed in this case to take charge of the properties in Schedule B appended to the plaintiff's petition." *Marulasidda Raja v. Siddalinga Raja*, 17 Ind. Cas. 16.

If the defendant's claim be not in any way connected with the subject-matter of the plaintiff's claim, but is altogether out of the scope of the suit as instituted by the plaintiff, the Court has no jurisdiction to appoint a receiver. In such a case the proper course for the defendant is to institute a new suit for his own claim and ask for a receiver in such suit.<sup>5</sup>

Further, where the defendant applies for a receivership, it appears, that, according to the English practice, such application can only be made on notice to the other parties and after entering his appearance in Court.<sup>6</sup> But in the case of a plaintiff it is open to the Court to grant a receiver even on an *ex parte* motion, though only under special circumstances.<sup>7</sup>

The person whose property is proposed to be put into the receiver's hands must be made a party to the action, so that he may have an opportunity of resisting the application, if he should deem it fit.<sup>8</sup> The opinion has been broadly expressed by Mr. Justice Bradley of the Supreme Court of the United States that "a receiver could not be appointed over property in the possession of a person not a party to the suit."<sup>9</sup>

It is a general rule of law that an order granting any application can only be made after notice to the other party and after hearing the objections of such party, if any. But in exceptional cases, Courts have power to grant an application even *ex parte*.<sup>10</sup> It is only in cases of

*Ex parte* application for appointment of receiver.

(5) See *Carter v. Fly*, (1894) 2 Ch. 541; Kerr on Receivers, p. 133; Woodroffe on Receivers, 2nd Ed., p. 63,

(6) See *Sargent v. Read*, 1 C. D. 600; But see also the judgment of Chitty, J., in *Hick v. Lockwood*, [1883] W.N. 48.

(7) *Lucas v. Harris*, 18 Q.B.D. 134; *Re Potts*, (1893) 1 Q.B. 648; *Evans v. Lloyd*, [1883] W.N. 171; *Filling v. Blythe*, (1899) 1 Q.B. 557.

(8) *Dale v. Kent*, 58 Ind. 584; Gravenstine's Appeal, 49 Pa. St. 310.

Where a petitioner has a razinama decree for maintenance which he claims to have been made a charge on the Kalahasti Estate he cannot proceed in execution against the property in the hands of persons who have purchased portions of the estate in sales under mortgage-decrees. The purchasers should be made parties to the execution petitions and a receiver appointed. His only course is to bring a separate suit making all of them parties in which the rights of all parties may be adjusted. *Gansham Doss v. Rajah of Kalahasti*, (1915) M W N. 245 = 2 L.W. 326.

(9) *Scarles v. Jacksonville*, P. & M. R. R. Co., 2 Woods, 621, 626. Although this opinion is expressed in much too strong a language and although Courts both in this country and in England have appointed receivers of property not in the possession of a party still, the above mentioned opinion lays down a general rule which it will be safe and convenient to follow in the absence of strong and exceptional grounds to the contrary. See *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654 = 9 C.L.J. 563 = 36 C. 713 = 1 Ind. Cas. 356.

(10) As we have already seen in Chap. I, one of the chief functions of a Court of Equity was the granting of relief which the Common Law Courts were unable to grant,



General rule—  
Receiver not appointed on *ex parte* application except under certain special circumstances.

extreme emergency that an order of appointment is made on an *ex parte* application, as where there is an imminent risk of the other party defeating the applicant's object by making away with the property, which is sought to be preserved by the appointment of the receiver, if notice of the application was served on him.<sup>11</sup>

Even in such cases, the Court sometimes requires from the applicant an undertaking as to damages, if the *ex parte* order should be found to have been obtained on insufficient grounds.<sup>12</sup> As a general rule, the Court exercises the greatest caution in granting a receiver on an *ex parte* application.<sup>13</sup>

Consequently it follows that in several respects Courts of Equity did not feel themselves bound by the technical rules of procedure that constantly controlled the action of the Common Law rules. Grounded on the same principle, Courts of Equity were deemed to be always open to grant relief in a fit and proper case, and the authority of the Judge in Chambers is the authority of the Court itself. Per Caldwell, C.J., in *Walters v. Anglo-American, etc., Co.*, 50 Fed. R. 316. There is practically no restriction as to when and how a Judge of a Court of Equity exercises his powers, or grants his relief.

(11) There are several reported cases in which Courts have declared the appointment of receivers without notice void; but in those cases the observations of the Court as to their voidability were not made in the abstract, but in connection with other facts showing want of power in the Courts to appoint receivers even with notice. Alderson on Receivers, 1905, S. 131, p. 168.

(12) *Taylor v. Eckersley*, 2 C.D. 302; *Minter v. Kent*, 72 L.T. 186

(13) If, upon an application *ex parte*, the Court thinks that the case is not so urgent as to require its immediate interference, it will order notice of the application to be served on the defendant. See *Lord Byron v. Johnston*, 2 Mer. 29. "It should be a very strong case," says the Supreme Court of one of the United States of America, "substantiated by strong affidavit or affidavits of fact and urgency, to justify the appointment of a receiver and the dispossession of the owner of his presumptive right to control his own property, with no bond to compensate him for its wrongful seizure." (*Dollins v. Lindsey*, 89 Ala. 217, 7 So. R. 234). "It is of the very essence of a motion for the appointment that notice shall be given to the defendant of the time and place of the application; and it is only in an extreme case, such that the exigency of the case would be fatal, that a receiver can be justly appointed without reasonable notice to the defendant." (*Fredenheim v. Rohr*, 87 Va. 764, 13 S.E.R. 193, 266). "The general rule is to proceed only after notice, but this rule is not infallible so as to prevent the Court from proceeding in cases where it is impracticable to give legal notice—as in the case of absconding or non-resident defendants; but, subject to proper limitations, the Court may in such case proceed without notice, and leave the party to move to vacate the order if he chooses to come in and submit to the jurisdiction of the Court." (*Haugan v. Netland*, 51 Minn. 552, 53 N.W.R. 873). "There was no obstacle," said the Court in another case "to giving notice to the company before acting on the appointment of a receiver. No fraud or insolvency was charged against any of the parties; nor that the property of the company was in danger of removal beyond the jurisdiction of the Court, or of otherwise being leased." Under these circumstances of the case, the appointment of a receiver was an unwarranted exercise of judicial power, which it is the duty of this Court to reverse and set aside." (*Cincinnati, Hamilton and Dayton Railroad Co. v. Jewett*, 37 Ohio St. 649). "It is the better practice, and the one supported by the best authorities on the subject, to require notice to be given to the defendant before passing upon the application, unless it be in cases of great emergency and imperative necessity." *Ruffner v. Mairs*, 38 W. Va. 655.

"It is only in the most urgent cases that a receiver should be appointed without notice."<sup>14</sup> "The facts which justify the appointment of a receiver without notice to the party whose possession is disturbed, are exceptional at best. Nothing but the plainest showing of an imperative necessity for such an order, to prevent a failure of justice, should move a Court to grant a motion to that end, though there is no hard and fast rule, that one can give, prescribing when the discretionary power to make such an order may or may not be used."<sup>15</sup>

In an American case, the Supreme Court of one of the United States of America stated the law as follows. The statement of law contained therein equally applies to the circumstances of our country. The Court said:—"As receivers are ordinarily appointed without requiring of the applicant a bond for indemnifying the other party against damages which may be caused by a wrongful appointment,<sup>16</sup> the utmost care and circumspection should be observed in administering this extraordinary remedy. The Court should ever be reluctant to summarily take property from the possession of a defendant claiming right or title thereto, and putting it into the control and management of an appointee of the Court, without affording the claimant and possessor opportunity to be heard in opposition. The exceptional cases are, when the defendant is beyond the jurisdiction of the Court, or cannot be found, or when some urgent emergency is shown rendering interference, before there is time to give notice, necessary to prevent waste, destruction or loss; or when notice itself will jeopardize the delivery of the property over which the receivership is extended, in obedience to the order of the Court. A mere suspicion, opinion or belief that defendants may spirit away the effects, and place them beyond the power of the Court to compel delivery," does not make notice unnecessary.<sup>17</sup>

"The appointment of a receiver," says Simrall, J., in the case of *Whitehead v. Wooten*,<sup>18</sup> "is a peremptory remedial measure. Its effect is to deprive the defendant in possession, temporarily at least, of his property, before final decree settling the rights of parties litigant. If the application is made before the merits of the cause are disclosed,

(14) *Little Warrior Coal Co. v. Hooper*, 105 Ala. 665, 17 So. R. 118. (Per Curiam).

(15) See the judgment in *St. Louis, Kennett and Southern Railroad Co. v. Wear*, 135 Mo. 230, 36 S. W. R. 357.

(16) In our Courts also there is no practice of requiring from the applicant for the receivership any bond for indemnifying the opposite party if the *ex parte* order of appointment should be found to have been obtained on insufficient grounds. The English practice seems to require some undertaking as to damages. See note 31, *infra*.

(17) *Moritz v. Miller*, 87 Ala. 331, 6 So. R. 269.

(18) Per Simrall, J., in *Whitehead v. Wooten*, 43 Miss. 523,

as before answer is filed, there must be strong grounds laid. \* \* \*

\* \* \* There must be strong and special reasons for the appointment before answer as on proof of fraud, by affidavits, or immediate danger to the property, unless at once taken in charge by the Court."

As a matter of principle Courts of Equity are exceedingly averse to the exercise of their extraordinary jurisdiction by the appointment of receivers upon *ex parte* applications, and "this practice is never tolerated except in cases of the gravest emergency, demanding the immediate interference of the Court for the prevention of irreparable injury, or in cases where defendant has absconded and wilfully put himself beyond the jurisdiction of the Court."<sup>19</sup>

And when, upon special grounds of emergency, plaintiff asks for an injunction and a receiver *ex parte*, and before the defendant files his statement, defendant may be heard by affidavit in opposition to the motion.<sup>20</sup>

If the appointment is made before the defendant files his written statement, it is open to the defendant, after filing such statement to apply for the discharge of the receiver. If it then appears to the Court that the receiver ought not to have been appointed, he will be discharged.<sup>21</sup>

Certain exceptional cases in which *ex parte* applications for appointment of receivers were granted.

(i) Where it is necessary to thwart the defendant's efforts to commit fraud.

Although, as we have seen, notice to the opposite party is the rule, there are exceptional cases where notice will be dispensed with and a receiver may be appointed upon an *ex parte* application.

Thus, when it is necessary that an appointment should be made immediately in order to prevent defendants from committing a contemplated fraud, the Court will dispense with the usual notice.<sup>22</sup>

Where the defendant is in insolvent circumstances and is disposing of the property in which the plaintiff is also interested and where defendant is collecting and appropriating the proceeds of the sales of such property, the appointment of a receiver

(ii) Insolvency.

(19) See High on Receivers, 4th Ed., S. 111, p. 128. A defendant who has had notice of motion for an injunction or receiver which he is willing and ready to meet ought not to have an order issued against him *ex parte* (*Graham v. Campbell*, 7 Ch. D. 490). But in cases of extreme urgency the Court may grant an order without notice even after appearance (*Allard v. Jones*, 15 Ves. 605; *Harrison v. Cockerall*, 3 Mer. 1; *Petley v. Eastern Counties Railway Co.*, 8 Sim. 483).

(20) *Keen v. Colt*, 1 Halst. Ch. 365.

(21) *Phoenix v. Grant*, 3 Mac. Arthur. 220.

(22) *Rogers v. Southern Pine etc. Co.*, 21 Ter. Civ. App. 48; Alderson on Receivers, 1905, S. 123, p. 162.

without notice would be justified.<sup>23</sup> But mere insolvency, without disposition of the property, is not a sufficient ground for the appointment of a receiver without notice.<sup>24</sup>

(iii) Where defendant has withdrawn from the jurisdiction of the Court in order to prevent service of process on him.

So, also, where the defendant has withdrawn from the jurisdiction of the Court to prevent the service of process on him, or where such appointment is necessary to prevent the property of an absentee being wasted or moved beyond the Court's jurisdiction, an appointment may be made without notice.<sup>25</sup>

Thus a receiver of a corporation was held to have been properly appointed without notice, when its officers could not be found for service.<sup>26</sup>

(iv) Where notice will jeopardize the delivery of the property to the receiver.

Then again where notice will jeopardize the delivery of the property to the receiver, an appointment may be made *ex parte*.<sup>27</sup>

An appointment will be made without notice when the giving of notice will imperil the property over which the receiver is sought. "A grave exigency should exist to warrant a Court's resorting to this extraordinary remedy; and the Court would be exceedingly reluctant to give sanction to a rule which would permit the summary taking of property from the possession of a defendant and putting it in the custody of another without notice and an opportunity for hearing. Notice is the rule, and it should always be required except in cases of pressing emergency, where it is made to appear that immediate interference is necessary to prevent property from being wasted, destroyed or lost, or *where the giving of notice will imperil the delivery of the property over which the receiver is sought*; and in such cases the order should be made returnable within a reasonable time."<sup>28</sup>

(23) *Sims v. Adams*, 78 Ala. 375.

(24) *Thompson v. Tower Manufacturing Co.*, 87 Ala. 733; 6 So. R. 928. The poverty or insolvency of a trustee is not a ground for a receiver unless there be in addition thereto some danger or loss to an estate. *Sivaji Rajah Sahib v. Aiswariyanandaji Sahib*, 29 M.L.J. 209.

(25) *Sanford v. Sinclair*, 8 Paige, 373.

(26) *Lindgreen-Mahan Chemical Fire Engine Co. v. Revere Rubber Co.*, 70 Ill. App. 379.

(27) *Bank of Florence v. U. S. Savings and Loan Co.*, 104, Ala. 294.

(28) *Cole v. Price*, 22 Wash., 18, 60 Pac. R. 153.



(vi) Where such property is of a kind which may be easily put out of the reach of the Court.

Where the property which is the subject-matter of receivership proceedings is of such a nature as may be easily put out of the reach of the Court, a receiver may be appointed without notice.<sup>29</sup>

(vii) Other miscellaneous exceptions.

Acting on the same principles that govern the several exceptional cases stated above, Courts will dispense with notice to the opposite party when such dispensing is necessary in order "to preserve the property in controversy from threatened, impending and irreparable loss or damage, where, from the peculiar situation or attitude of the defendants or parties interested in the property, it is impossible to give the notice or is inadvisable to allow the time requisite to give notice to elapse before the relief can be granted, or where there is danger of injury being done to the property by the defendants or others, if they have knowledge of the application; and where the defendants, or interested parties, have absconded, or otherwise evade the process of the Court."<sup>30</sup>

The Courts in England have also power to appoint a receiver on motion *ex parte* by the plaintiff, under special circumstances, upon an undertaking as to damages;<sup>31</sup> and the order may be made even before service of the summons on the defendant.<sup>32</sup> But the circumstances must be very special.<sup>33</sup>

(29) *Moore Furniture Co. v. Prussing*, 71 Ill. App. 666.

(30) *Rogers v. Southern Pine Lumber Co.*, 21 Tex. Civ. App. 48, 51 S.W.R. 26. A Court has jurisdiction to appoint, under special circumstances, one of the parties to the suit as receiver even without the consent of the other, e.g., where the estate is small and cannot afford to have a paid Receiver. *In re Thayyanayaki Achi*, 25 Ind. Cas. 602.

(31) *Taylor v. Eckersley*, 2 C. D. 302; *Minter v. Kent, & Land Society*, 72 L.T. 186; an undertaking by plaintiff as to damages ought to be given also on every interlocutory injunction, though not where the order is in the nature of a final order (*Fenner v. Wilson*, (1893), 2 Ch. 656), and (except under special circumstances) effect ought to be given to it (per James, L.J., *Graham v. Campbell*, 7 C.D. 490; and see Mem. by Jessel, M.R., in W.N. (79), 74; *Newcomen v. Coulson*, 7 C.D. 764; Seton, 173-174). An undertaking will not be required where an injunction is granted or receiver is appointed at the instance of the Attorney-General on behalf of the Crown, *Att. Gen. v. Albany Hotel Co.*, 1896, 2 Ch. 696, distinguishing *Secretary of State for War v. Chubb*, 43 L.T. 83; See Annual Practice, 1908, p. 679.

(32) See Daniell's Chancery Practice, 7th Ed., Vol. II, p. 1431; Rules of the Supreme Court in England, O. 52, r. 3; *Re H.'s estate*, 1 C.D. 276; *C. also Re Wells*, 45 C.D. p. 572.

(33) See *Lucas v. Harris*, 18 Q.B.D. p. 134; *Re Potts*, (1893) 1 Q.B. 648; *Evans v. Lloyd*, W.N. (89) 171; It was decided by the C.A. that, where a defendant has not appeared, and an application is made for the appointment of a receiver, it is not sufficient to file the summons at the Central office, but it must be served on the defendant, or leave must be obtained for substituted service (*Tilling v. Blythe*, 1899, 1 Q.B. 557). In K.B.D., however,



An application by the defendant or by any party other than the plaintiff must be made on notice after appearance entered.<sup>34</sup>

When the defendant to a contemplated action is out of the jurisdiction, and the process cannot in consequence be issued without leave of the Court, and if a case of emergency is made out, a receiver may be appointed on an *ex parte* application and leave given for the issue of the process by the same order.<sup>35</sup>

There is no doubt that the Indian Courts have also power to grant an application for receivership on an *ex parte* motion.<sup>36</sup> But here also it should be noted that such an order can be made only in exceptional cases, and where strong grounds exist for such immediate action.<sup>37</sup>

it is not the practice to insist on strict personal service. It is considered sufficient if it is shown by affidavit that the summons, though not personally served, has come to the knowledge of the judgment-debtor.

(34) *Sargent v. Read*, 1 C.D. 600. But Chitty, J., held that the applications by defendant under S. 25 (8), under the English Judicature Act may be made *ex parte*, *Hick v. Lackwood*, W.N. (83), 48.

(35) See *Young v. Brássey*, (1875) 1 Ch. D. 277, (where an injunction was so granted). As a general rule, Receivers are appointed upon interlocutory application, in the earlier stages of the suit, although in special cases, the appointment may be made at the final hearing and as a part of the final decree. "Under the earlier English practice, the court would not entertain an application for a receiver until after defendant had appeared and answered. The rule, however, was gradually relaxed, and under the modern practice receivers were frequently granted before answer. And although the English Court of Chancery was always averse to interference before answer, unless for good cause shown, yet it may be regarded as the settled English practice to grant receivers before answer, in cases of emergency calling for the immediate interference of the court to protect the equities of plaintiffs, and where the merits of the case are sufficiently disclosed by affidavits. (*Vann v. Barnett*, 2 Bro. C. C., 158). And if defendant has put in an affidavit in opposition to plaintiff's affidavits upon the motion, the affidavit will be regarded as a sufficient appearance for the purpose of entertaining the motion." *Vann v. Barnett*, 2 Bro. C. C. 158. High on Receivers, S 103, pp. 121-124. The grounds which will induce the Court to interfere before defendant's answer must be very strong, and there must be clear proof of fraud, or of immediate danger to the property unless it is taken into the custody of the court. (*Clark v. Ridgely*, 1 Md. Ch., 70). And when there are no allegations of defendant's insolvency, or of danger to the property and interests concerned, the relief will not be granted before answer. (*Simmons v. Wood*, 45 How., Pr. 269). So when insolvency is the ground relied upon, but the affidavit on which the application is based merely states that defendant is not deemed a responsible man by those who know him, and the affidavit of defendant fully negatives the insolvency, a receiver will be refused. (*West v. Swan*, 3 Edw. Ch. 420). The order of appointment made *ex parte* will usually be until the next motion day, and the receiver may be directed to receive a limited sum, according to the circumstances of the case. See Daniell's Chancery Practice, 7th Ed., 1901, Vol. II, p. 1431 Note (B).

(36) See *Ranganayagi Ammal v. Mahali Pillai*, 4 L.B.R. 356.

(37) See the judgment of Rattigan, J., in *Jiwani v. Labhu Ram*, 107 P.R. 1908=12 P.L.R. 1909=4 Ind. Cas. 694. The following observations of Piggot, J., as to the want of formal notice may also be noted:—"Finally it was contended before us that the order was made without notice to the parties and without giving the defendants in particular an

Though the Code of Civil Procedure does not require in terms that, as a rule, the opposite party should receive notice of an application for a receiver before an appointment is made, it is obvious both on principle and authority that, except under very exceptional circumstances, no such order should be made except on notice, and that the application should be supported by affidavit. The appointment of a receiver is a relief which, while certain to prove inconvenient, may be also absolutely ruinous in its effects on the business of the party concerned, and therefore an application for it should be dealt with the greatest caution and judicial discretion.<sup>38</sup>

Instead of issuing an injunction or appointing a receiver in the first instance the Court will often grant an *interim* order in *Interim order of appointment.* the nature of an injunction, by which the defendant is restrained or receiver directed to take charge of property until after a particular day named, liberty being given to the plaintiff to serve notice of motion on the defendant.<sup>39</sup>

"In many respects there is a convenience in proceeding by *interim* order instead of granting an injunction or appointing a receiver in the first instance. Among other conveniences the defendant is not put to the necessity of coming to the Court to discharge the order."<sup>40</sup> Where an *interim* order is granted until a certain fixed date or until further order, it signifies that it may be dissolved before that day. It does not mean that it is to go on after that day or until further order, but that it is to stop earlier if the Court shall order.<sup>41</sup> *Interim* orders are generally granted upon *ex parte* application. As in all cases of *ex parte* applications, it is necessary that the Court should be informed of all material facts. It is the duty of the party who makes the application for an

opportunity of showing cause against it. We have heard counsel for the defendants at length on the fact of the case, and it seems to us that the order was a good and equitable order, suited to the circumstances of the case, and we are not, therefore, disposed to interfere with it merely on the ground that formal notice of the intention to take action under O. 40 was not given to the parties." Per Piggot, J., in *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973 (974).

(38) See the remarks of the Judges in *Srimuta Prosonomoyi Devi v. Beni Madhab Rai*, 5 A. 556 (561), which are most apposite to this case, as are those in *Sidheswari Dabi v. Abhoyeswari Dabi*, 15 C. 818 (822) cited and followed in *Gorid Dut Bogla v. Perushaw Sorabshaw*, 2 L.B.R. 222 (223).

(39) Kerr on Injunctions, 3rd Ed., 1868, p. 625; As to the appointment of *ad interim* receivers, see *Thakar Das v. Shah Din*, 74 P.W.R. 1915. For an example of a provisional order appointing a receiver, see *Ramji v. Koman Das*, 13 A.L.J. 79.

(40) *Fuller v. Taylor*, 32 L.J. Ch. 376.

(41) *Bolton v. London School Board*, 7 Ch. D. 771.

*ex parte* appointment or interim order to bring all material facts to the notice of the Court.<sup>42</sup>

Courts in England have been held to have power to appoint a receiver of its own motion, even where no claim has been made by any party to the suit.<sup>43</sup> So also a receiver may be appointed by the appellate Court, though it has not been asked for even in the Court below.<sup>44</sup>

It appears that the law on the subject in this country is also similar to the English Law. It seems that, in this country also, a receiver can be appointed by the Court of its own motion.<sup>45</sup>

In a suit which recently came on appeal before the Allahabad High Court and which was one for partition, an application was made by the defendant for temporary injunction. The lower Court, thereupon, directed that until the determination of the suit, the plaintiff shall have the control and management of a portion of the property in suit and the defendant of another portion. It was held that this order was in effect an order appointing receivers and was covered by the provisions of O. XL r. 1 of the Civil Procedure Code. It was held in that case that a Court has a right to proceed under that rule where it appears to it to be just and convenient to do so and the order is not improper or illegal merely because it is made *suo motu*.<sup>46</sup>

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(42) *Fuller v. Taylor*, 32 L.J. Ch. 376. Where an *interim* order is sought, there should be no delay in making the application. If there has been delay, the Court will not grant the application, but will give the plaintiff leave to serve short notice of motion on a day fixed, notwithstanding appearance not entered. *Green v. Bristol Tanning Co.*, 2 Pat. Ca. Rep. 268.

(43) See *Malcolm v. Montgomery*, 2 Mol. 500.

(44) *Chaplin v. Young*, 6 L.T. 97; *Hyde v. Warden*, 1 Ex. D. 309, C.A. Where the title to the subject-matter of controversy is in dispute and both sides claim the right of possession and it appears that the property should, in the interests of all the parties, be taken under the control of the Court, pending the determination of the litigation, the Court may, in such a case appoint a receiver of its own motion to take and hold property pending the litigation. *Elk Fork Oil Gas Co. v. Foster*, 39 C.C.A. 615; 99 Fed. 495; High on Receivers, 4th Ed., S. 83, p. 110.

(45) See *Bidya Prosad Narain Singh v. Asrafi Singh*, 17 C.W.N. 1070 at p. 1072 = 20 Ind. Cas. 269 = 40 C. 881, where their Lordships Sharfuddin and Richardson say "when the dispute comes before the Civil Court, and that Court acting on its own motion or at the instance of one or other parties before it thinks that a receiver should be appointed, etc."

(46) *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973 = 36 A. 19 = 22 Ind. Cas. 59. The following observations of Piggot, J., in this case are worthy of being noted in this connection. His Lordship says:—This is an appeal against an order of the District Judge who, in the course of a suit for partition pending before him, has seen fit to direct that until the

But very strong grounds ought to exist for the Court to take this extraordinary step of appointing a receiver on its own motion and without an application being made by either party. Where in a suit for obtaining a declaration to the effect that certain widows were entitled to maintenance only and not to possession for life of their husband's estate the Deputy Commissioner *suo motu* moved the District Judge to appoint a receiver of the estate *pendente lite* <sup>47</sup> and the latter officer did so, the order of appointment was set aside as illegal and improper and the District Judge was directed to restore the property to the parties at once.<sup>48</sup>

The following are some of the observations of Kensington, J., in the course of the judgment in that case:—"It does not appear that either side petitioned the Court for appointment of a receiver, and there is nothing to show why a receiver is considered necessary in the course of a declaratory suit. The Deputy Commissioner seems to have moved the Court of his own accord, and the District Judge has agreed to the arrangements, proposed without (so far as can be made out) considering whether the appointment is either just or convenient. There have subsequently been further orders by the Deputy Commissioner making arrangements for the pay of the receiver and a considerable staff required to manage the property including the share owned by the

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determination of the suit the plaintiffs shall have the control and management of a portion of the property in suit, and the defendants of another portion. The order is attacked before us on the ground that it is *ultra vires* and that it should not have been passed upon an application for a temporary injunction made by the defendants, which was pending before the District Judge when he passed the order under appeal. We think that although the District Judge did not stop to consider precisely under what portion of the Code of Civil Procedure he was acting, he has in effect appointed the plaintiffs to hold possession as receivers of a portion of the property in suit and the defendants to do the same in respect of another portion. The order itself seems to us not *ultra vires*, but one covered by the provisions of O. XL, r. 1. It has been argued before us, however, that the effect of this order is to remove the defendants from possession or custody of property from which the plaintiffs had not a present right to remove them. We think this objection does not lie in the mouth of the defendants in view of the attitude taken up by them in their written statement. As for the plea that the order complained of should not have been passed on the application for a temporary injunction, we find that it was as a matter of fact passed upon a consideration of the allegations made in that application and in the reply filed on behalf of the plaintiffs and all the circumstances of the case as a whole. A Court has a right to proceed under O. XL, r. 1, where it appears to it to be just and convenient to do so, and the order is not improper or illegal merely because it was made *suo motu*." *Per* Piggot, J. in *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973=36 A. 19=22 Ind. Cas. 59.

(47) This was a procedure under the Civil Procedure Code (Ac? XIV of 1882) S. 505. Under the present Civil Procedure Code the Subordinate Judge can make the appointment himself.

(48) *Per* Kensington, J., in *Mussammatt Bakt Bhari v. Isa Shah*, 62 P.W.R. 1911. (Following *Bhai Bhagt Singh v. Harnam Singh*, 136 P.R. 1890, *Budhwanti v. Bishen Kaur*, 73 P.R. 1902, *Sant Ram v. Ram Chand*, 36 P.R. 1910=53 P.W.R. 1910.)



plaintiff. These orders are presumably well meant, in the interests of the parties, but *they involve heavy expenditure which neither side likes, and they are quite unauthorised.*"<sup>49</sup>

According to the practice in England, "In doubtful cases where damage may be occasioned to the defendant, in the event of an injunction or *interim* restraining order proving to have been wrongly granted, the Court will require the plaintiff, as a condition of its interference in his favour, to enter into an undertaking to abide by any order it may make as to damages. The undertaking was formerly required only in cases where the application was *ex parte*, but the more recent practice is to require the undertaking as well, where the motion is on notice, as where it is *ex parte*."<sup>50</sup> If the plaintiff is not within the jurisdiction<sup>51</sup> or is a limited company<sup>52</sup> the undertaking of some responsible person within the jurisdiction is required."

The undertaking remains in force although the action is dismissed<sup>53</sup> and the Court at the hearing determines that the plaintiff is not entitled to the relief asked for by him. The defendant is entitled to the benefit of the undertaking even though it should be decided that the original order of appointment was wrongly granted owing to the mistake of the Court itself.<sup>54</sup>

As, on the one hand, the Court may in doubtful cases require the plaintiff to enter into an undertaking as to damages, as the condition of its interference, in his favour; so, on the other hand, "it may require the defendant to enter into terms as a condition of withholding an injunction or refusing a receivership. If the Court feels that it can by imposing terms on the defendant secure the plaintiff, in the event of the legal right being determined in his favour, against damage from what may be done by the defendant in the meantime, and the defendant is willing to accede to the terms required by the Court, an injunction or receivership will not be granted."<sup>55</sup> (*Bramwell v. Halcomb*, 3 M. & C. 737, 739). The terms imposed on the defendant as the condition of withholding the

Terms imposed on defendant as a condition of withholding order.

(49) Per Kensington, J., in *Mussammat Bakht Bhari v. Isa Shah*, 62 P.W.R. 1911.

(50) *Graham v. Campbell*, 7 Ch. D. 490.

(51) *Hamilton v. Board*, 1 N.R. 379; 1 Set. 174.

(52) *Anglo Danubian & Co. v. Rogerson*, 10 Jur. N.S. 87; 1 Set. 174; Kerr on Injunctions, 3rd Ed., p. 627.

(53) *Newby v. Harrison*, 3 D. F. & J. 290.

(54) *Griffith v. Blake*, 27 Ch. D. 475.

(55) *Bramwell v. Halcomb*, 3 M. & C. 737, 739; *Suprasanna Roy v. Upendra Narain*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.



order vary with the circumstances and the exigencies of the case.<sup>56</sup> The defendant may be required to do such acts, or execute such works, or to remove any works, or otherwise deal with the same as the Court shall direct,<sup>57</sup> or to enter into an undertaking to refrain from doing in the meantime the acts complained of by the plaintiff,<sup>58</sup> or to abide by any order the Court may make as to damages or otherwise, in the event of the legal right being determined in favour of the plaintiff.<sup>59</sup> If the permission to do the act complained of involves the making of profits, the terms imposed will be that the defendant shall keep an account of all profits made pending the trial of the right.<sup>60</sup> An undertaking as to damages may be required as well as an undertaking to account.<sup>61</sup>

Where an injunction or receivership is withheld upon the condition of the defendant entering into an undertaking as to terms, the Court may make it a part of the order that if default is made in complying with the order the injunction or receivership shall be granted.<sup>62</sup>

The usual practice in England is to make the application in open Court, but in exceptional cases, it may be made by summons at chambers. Thus where the application relates to the management of property, and all the parties beneficially interested<sup>63</sup> consent, an order for appointment of a receiver may be granted in chambers. So also where it is for the appointment of a receiver in place of one who has died or resigned,<sup>64</sup> the application may be made in chambers. Where the action has been commenced by originating summons<sup>65</sup> a motion for appointment of receiver may also be made in chambers. In cases of equitable execution the motion is generally made in chambers.<sup>66</sup>

**Application whether made in open Court or chambers.**

**(i) English Law.**

(56) *Clarence Ry. Co. v. Great North of England, etc., Ry. Co.*, 2 Ra. Ca. 763.

(57) *Att-Gen. v. Manchester and Leeds Ry. Co.*, 1 Ra. Cas. 436.

(58) *Clarke v. Clarke*, 13 W.R. 533 (Eng.).

(59) *Jones v. Great Western Ry. Co.*, 1 Ra. Cas. 685.

(60) *Bramwell v. Halcomb*, 3 M. & C. 737.

(61) *Rigby v. Great Western Ry. Co.*, 2 Ph. 44.

(62) *Proprietors of North Bridge and Roads v. London and Southampton Ry. Co.*, 1 Ra. Cas. 653.

(63) R.S.C., Ord. 55, r. 2 (13); *Blackborough v. Ravenhill*, (1852) 16 Jur. 1085; and see the receivership order in *Wade-Gery v. Handley*, (1876) 1 Ch. D. 653, set out in 1 Seton, Judgments and Orders, 6th Ed., p. 758. See Halsbury's Laws of England, Vol. XXIV, 1912, pp. 343, 344, 345.

(64) *Grote v. Bing*, (1852) 1 W.R. 80 (Eng); *Booth v. Coulton*, (1868) 16 W.R. 683 (Eng.).

(65) *Re Francke, Drake v. Francke*, (1888) 57 L.J. (Ch.) 437.

(66) *Re Hartley, Nuttall v. Whittaker*, (1892) 66 L.T. 588.

But in this country it has been held by the Calcutta High Court that even an application for the appointment of a receiver on the retirement of another receiver should be made in Court and not in chambers.<sup>67</sup>

Form of application and procedure thereon—Affidavit—English and Indian Law and practice.

"There must be some application filed on behalf of the parties seeking the appointment of a receiver and invoking the power of the Court to be exercised in their behalf. They must make out some plan of pleading, stating a case for the appointment of a receiver, that the opposite parties may know on what grounds the right to the receiver is claimed, and that they may know what they have to meet and defend against to prevent the appointment, and the pleadings in this behalf will bind and limit the inquiry. It will not do to dispense with all rules of practice in the appointment of receivers, any more than in any other class of legal proceedings. The application will not be construed by any harsh and technical rule, but it must state generally a case for the appointment of a receiver, else it cannot be sustained."<sup>68</sup>

"The application is properly made on written motion or petition, either as a part of the complaint or cross-complaint or as a distinct petition. No other pleading is necessary than the application itself. The application for the appointment of a receiver, however, as any other petition or complaint, should be sufficient in itself, and should, therefore, contain the allegations necessary to show why the prayer should be granted. While, however, the allegations in the application for a receiver may be supplemented and enlarged by affidavits and oral testimony, yet the appointment cannot be sustained if the allegations fail to show statutory or equitable ground on which it may stand."<sup>69</sup>

The usual principle in England is to apply to the Judge supporting the application by an affidavit of facts. Such affidavit should state (1) the amount of debt due to the applicant or other injury likely to be caused to him; (2) particular conduct of the other party which makes the application for receiver necessary; (3) particulars of the property as to which it is proposed to appoint a receiver and (4) the name of the receiver proposed to be appointed.<sup>70</sup> It is within the Judge's discretion, if the affidavit is sufficient, to issue a notice to the other party to show cause why the appointment ought not be made of a receiver, and to grant an injunction restraining such party from assigning, charging, or

(67) *J. C. Stalkart v. W. Stalkart*, 28 C. 250.

(68) *Order of Iron Hall v. Baker*, 134 Ind. 293 (Per Cur.).

(69) *Sellers v. Stoffel*, 139 Ind. 465; 39 N.E.R. 52 (Per Cur.).

(70) See Chitty, F. 437.

otherwise dealing with the property in question until after the hearing of the application. The injunction is finally embodied in the notice served. But an injunction should not be granted as a matter of course in all cases. The Judge should satisfy himself that the property is in danger before granting an injunction.<sup>71</sup> Where the property is not likely to be endangered by notice of the application, the applicant may proceed in the first instance by summons before the Judge.<sup>72</sup>

If the plaintiff has not, in the opinion of the Court, laid a sufficient foundation for his action, it will be dismissed. The Court will not order the motion to stand over unless it has a favourable opinion on the merits of the case.<sup>73</sup> Nor will the Court, unless the circumstances of the case are such as to lead it to form an opinion as to the legality of the act complained of, or to put the case into a course of immediate investigation, allow the motion to stand over till the purpose has been so far executed as that its character may be judged of, but will refuse the motion.<sup>74</sup> An injunction will not be granted nor a receiver

Dismissal of action unless the Court can form a favourable opinion on the merits.

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(71) *Lloyd's Bank v. Medway, &c., Co.*, (1905) 2 K.B. 359 C.A.

(72) Annual Practice, 1908, p. 195: Whether or not the Court will grant the application depends on the merits as collected from the affidavits. If a sufficient *prima facie* case be made out, the Court will consider the case sufficiently proved, unless the defendant files an affidavit denying it. (*Potts v. Potts*, 3 L.J. Ch. 176). The affidavit must traverse all the facts on which the plaintiff's equity depends. A mere general denial is not sufficient (*Pyecroft v. Pyecroft*, 2 Sm. & G. 326). If the affidavits of the plaintiff and the defendant are altogether conflicting (*De Tastet v. Bordenave*, Jac. 516), or if the balance of evidence is in favour of the defendant, the motion will be dismissed or ordered to stand over. The Court or a Judge may on the application of either party order the attendance for cross-examination of the person making the affidavit. O. XXXVIII. 1, 28, 29 of the rules of the Supreme Court of England; *Edwards v. Spaight*, 2 J. & H. 617; *Singer Sewing Machine Manufacturing Co., v. Wilson*, 2 H. & M. 584. But the Court has a discretionary power of acting upon such evidence as may be before it at the time of the application, and as may appear necessary to meet the justice of the case. The Court will not allow a motion to stand over in order to allow witnesses to be examined, if it is satisfied that the application is made for the purpose of creating delay (*Normanville v. Stanning*, 10 Ha. App. 20), or that the evidence is sufficient to enable it to deal satisfactorily with the motion. *Mayer v. Spence*, 1 J. & H. 87.

(73) *Wicks v. Hunt*, John 372. Where, in a suit for recovery of possession of certain properties, it appeared that the defendants' claim was superior to that of the plaintiffs, that the plaintiffs had not shown a better *prima facie* title than the defendants and that the defendants' possession was secured to them by an order of the Magistrate. Held that the case was not one in which an order for appointment of a receiver should be made. *Sivaji Rajah Sahib v. Aiswariyanandaji Sahib*, 29 M.L.J. 209.

(74) *Haines v. Taylor*, 2 Ph. 209.

appointed on the principle that it will do no harm to the defendant, if he has not done the act complained of.<sup>75</sup>

In India also an application for the appointment of receiver *pendente lite*, should ordinarily be made by a separate petition supported by affidavit, and should not be embodied in the plaint. The mere fact that the plaint is verified and sets out the facts even to the most minute particulars will not do. A separate petition would generally be required.<sup>76</sup>

The affidavit in support of an application for the appointment of a receiver should show the nature of the interest possessed by the party applying in the property, and the grounds on which he alleges that it is just and convenient that a receiver should be appointed.<sup>77</sup>

Nature and requirements of affidavit in support of application for receiver.

The application must show clearly such facts as will satisfy the Court that the property can be better managed or preserved more advantageously to the interests of the parties by placing it in the hands of a receiver than by allowing it to continue in the custody of one or other of the parties.<sup>78</sup> But if the pleadings disclose an admission of title in the applicant sufficient to give him a *locus standi* to ask for a receivership the affidavit need not specifically state the applicant's interest in

(75) *Coffin v. Coffin*, Jac. 72; see also *Srimati Prasannomoyi v. Beni Madhab Rai*, 5 A. 556=A.W.N. 1886, 136. [Fol. in U.B.R., 1908, 2nd Qr. Crim. Pro. Code, S. 503; 107 P.R. 1908; Ref. to in 2 L.B.R. 222.]

(76) *Gorid Dut v. Perushaw Sorabshaw*, 2 L.B.R. 222.

(77) See Halsbury's Laws of England, Vol. XXIV, 1912, S. 641, p. 348. In case of *ex parte* application the affidavits must fully and fairly state the case within the knowledge of the plaintiff, so that the Court may see that *prima facie* the thing is fair in the aspect in which it is presented to the Court. All the facts must be brought before the Court which are material to be brought forward. There must be no concealment or misrepresentation. All the *res gestæ* must be represented as they actually are. *Att.-Gen v. Mayor, &c., of Liverpool*, 1 M. & C. 210. The affidavits in support of an *ex parte* injunction or receiver should always state the precise time at which the plaintiff or those acting for him became aware of the threatened injury (*Calvert v. Gray*, 2 Coop. C. C. 171 n). They must show either that notice to the defendant would be mischievous, or that the mischief is so urgent that it would be done, if notice were served on the defendant before the injunction could be obtained. If the affidavits fall short of this point, the motion will be ordered to stand over and notice of it must be served on the defendant. *Anon.* 1 L.J. Ch. 4. The affidavits should contain no allegation not inserted in or inconsistent with the plaint or the statement of claim. Facts not founded on allegations in the statement of claim must not be introduced into the affidavits. Affidavits are to be considered only as evidence of the allegations made in the statement of claim, and cannot be attended to as laying a foundation for equities not claimed then. (*Dawson v. Yates*, 1 Beav. 301). There must be no variance between the allegations in the statement of claim or the aid sought thereby and the affidavits in support of it. *Wattleworth v. Pitcher*, 2 Pr. 189; *Stocking v. Llewellyn*, 3 L.T. 33. See also note (84), *infra*.

(78) *Ladd v. Harvey*, 21 N. H. 514; *Pignolet v. Bushe*, 28 How. Pr. 9.



the property.<sup>79</sup> If it is asked that any specified person should be appointed, an affidavit of his special fitness for the receivership will also be required.<sup>80</sup>

An affidavit sworn before the suit is commenced is useless even though it may be filed after issue of the summons,<sup>81</sup> but the Court may sometimes make an order on such an affidavit, if the applicant undertakes to have it re-sworn and re-filed.<sup>82</sup>

It is not absolutely necessary for the appointment of receiver that the facts upon which the application is made should be set forth in the pleadings, but it will be sufficient if they are presented to the Court by an affidavit at the hearing of the motion,<sup>83</sup> because it sometimes happens that the necessity for receivership arises only, after the institution of the suit.<sup>84</sup> Indeed this would seem to follow from the very nature of the appointment, which is usually treated as an auxiliary proceeding which assumes a prior main proceeding, and not as the ultimate object of the action.<sup>85</sup>

Facts need not appear in pleadings — Affidavits will be sufficient.

(79) *Norway v. Rowe*, 19 Ves. 144.

(80) See Yearly Practice of the Supreme Court, 1913, p. 715.

(81) *Silber v. Lewin*, (1889) 33 Sol. Jo. 757. Affidavits to be used on motions may be filed up to the last moment before the hearing. There is no rule that they must be filed at any particular time before the hearing of the motion (*Ex parte Leicester*, 6 Ves. 432). But the Court will not allow a party to gain an advantage from filing affidavits at the last moment. *Carew v. Yates*, 1 W.R. 11 (Engl.).

(82) *Green v. Prior*, (1886) W.N. 50; *Re Abbott's Trade-Mark*, (1904) 48 Sol. Jo. 351.

(83) See High on Receivers, 4th Ed., S. 83, p. 109.

(84) *Henshaw v. Wells*, 9 Humph, 568. In fact it is the usual practice, and a good practice, to conclude the plaintiff with a prayer for the appointment of a receiver. But it often happens that the remedy becomes necessary only in the progress of proceedings. It may be that this relief was not contemplated at the time of the institution of the suit. In such a case the Court will not deny relief merely because a prayer for receivership is wanting in the plaintiff. It acts upon the case as made upon the motion for a receiver, using, however, the plaintiff and the written statement to assist in ascertaining the facts. It is not, then, necessary that a specific prayer for the appointment of a receiver should be inserted in the plaintiff (*Commercial and Savings Bank v. Corbett*, 5 Sawyer, 172); and a receiver may be appointed at a final hearing in a proper case, even though there be no prayer for a receiver in the plaintiff. *Osborne v. Harvey*, 1 Y. & Coll. Ch. 116. See also Note 77, *supra*.

(85) *Hottenstein v. Conrad*, 9 Kan. 435. After the motion is opened no new evidence can be offered except with the leave of the Court (*Smith v. Swansea Dock Co.*, 9 Ha. App. 20). The Court may, however, admit affidavits after the case is opened, if a failure of justice is likely to occur by reason of their rejection or if great inconvenience would ensue (*East Lancashire Railway Co., v. Hattersley*, 8 Ha. 86). The Court may take notice of matters given in evidence in previous proceedings in the cause and may refer to notes made by the Court on such occasions. *Lister v. Leather*, 3 Jur. N. S. 433; *Kerr on Injunctions*, 3rd Ed., p. 621.



Allegations in the affidavits should be distinct and precise—General allegations not sufficient.

An affidavit filed in support of an application for receivership should state the facts relied upon as necessitating the receiver, distinctly and precisely, especially where fraud is one of the grounds relied upon for the interference of the Courts.<sup>86</sup>

Simply because the plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property and on this ground applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made.<sup>87</sup>

The verification in the affidavit must be based upon the knowledge of the affiant and if it is based upon the information and belief only, it will be held insufficient.<sup>88 & 89</sup>

The petition or application for a receivership must be verified in positive terms.<sup>90</sup> Allegations in the nature of hearsay will not be sufficient. For the Court to act upon the verification by the applicant the allegations must be such as, if found to be false, would subject the person verifying to the penalties of perjury.<sup>91</sup>

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(86) See *Srimati Prasonomoyi v. Beni*, 5 A. 556 = A.W.N. 1883, 136. If a statement of claim be delivered, the case made out must correspond with the allegations in the plaint or written statement (*i.e.*), the statement of claim or defence (*Butts v. Matthews*, 5 L.J. Ch. N.S. 134). If a man brings prominently forward and relies upon a given case, the Court will not allow him, if he should fail in that case, to spell out another and say he might have framed his case so as to show a title to the relief asked (*Whitworth v. Gaugain*, Cr. & Ph. 325). A man who complains of injury of a peculiar and special kind cannot be allowed to give evidence of another injury of a special and peculiar kind (*Hertz v. Union Bank of London*, 1 Jur. N. S. 127). An injunction or receiver is only granted on a specific case. The Court never grants injunctions or receivers on general complaints (*Hertz v. Union Bank of London*, 1 Jur. N.S. 127). The relief prayed must be consistent with the case made out (*Att.-Gen v Grocers' Co.*, 1 Keen, 506) and be such as may be asked for upon the statement of claim or defence (*Castelli v. Cook*, 7 Ha. 89). An injunction granted on motion must be such as is specifically claimed. *Burdett v. Hay*, 4 D.J. & S. 41; *Munro v. Wivenhoe, &c., Railway Co.*, *ib* 723.

(87) *Ibid*.

(88 & 89) *Burgess & Co. v. Martin*, 111 Ala. 656. See High on Receivers, S. 89, p. 114. The affidavits are usually made by the plaintiff himself (*Mollett v. Enequist*, 25 Beav. 609), but they may be made by any person acquainted with the facts (*Kenworthy v. Accunor*, 3 Madd. 550). An affidavit, however, made by the solicitor of the plaintiff, or by any other person than the plaintiff himself, is not sufficient, unless a good reason can be given for its not being made by the plaintiff himself. *Lord Byron v. Johnstone*, 2 Mer. 29; *Spalding v. Keely*, 7 Sim. 377; *Scotson v. Gaury*, 1 Ha. 99. At the hearing of an application for the appointment of a receiver the petitioner should not be permitted to read affidavits which have not been served on the opposite party, *Brundage v. Home Savings and Loan Association*, 11 Wash. 277, 39 Pac. R. 666, unless such other party is given due time and opportunity to meet them.

(90) *New South Building and Loan Association v. Willingham (Ga.)*, 13 S. E. R. 445; *Siegmund v. Ascher*, 37 Ill. App. 122; *Grandin v. La Bar*, 50 N.W.R. 151.

(91) *Siegmund v. Ascher*, 37 Ill. App. 122.

But an imperfect verification may be supplied at the hearing by affidavits, etc.<sup>92</sup>

A bare allegation of the plaintiff's belief that the property in controversy will be wasted or destroyed will not justify a Court in appointing a receiver. The grounds of such belief should be fully stated.<sup>93</sup>

It is not sufficient to allege generally that the plaintiff is entitled on principles of equity to the interposition of the Court. The facts relied upon should be particularly set out <sup>94</sup> in the application, and the same must be properly verified.

**A p p l i c a t i o n**  
should not contain scandalous matter.

A motion cannot be made for an injunction or receiver where the statement of claim contains scandalous matter, until the scandalous matter is expunged.<sup>95</sup>

**Affidavits must state facts in support of application — Statement of mere legal conclusions not sufficient.**

It will not be sufficient in the application for a receiver to allege merely the legal conclusions on which the plaintiff relies, and the facts must be averred on which such conclusions are predicated.<sup>96</sup>

**I m p e r f e c t i o n s**  
in application which are not in material particulars no bar to appointing receiver.

Imperfections in the petition or affidavit, which are not in material particulars, but are of a formal nature, would not be a bar to relief being granted; nor is it any answer to the application for the defendant to say "that the record is incomplete in particulars or that it is not in such a shape as may be necessary to enable the Court to administer complete justice between the parties."<sup>97</sup>

**Objections of a merely formal nature not allowed to be a bar.**

So also objections of a merely formal nature, and which can be set right by means of amendment, as for instance an objection as to want of parties or misjoinder of parties, would not be allowed to operate as a bar to the granting of the application.<sup>98</sup> But, if the Court has no

(92) *Martin v. Burgwyn*, 88 Ga. 78, 13 S.E.R. 958.

(93) *Hanna v. Hanna*, 89 N.C. 68.

(94) *Tomlinson v. Ward*, 2 Conn. 396.

(95) *Davenport v. Davenport*, 6 Madd. 251 (Eng).

(96) *Heavilon v. Farmer's Bank*, 81 Ind. 249.

(97) *Evans v. Coventry*, 5 DeG. M. & G. 911. In *Hottenstein v. Conred*, 9 Kan. 435 (438) which was an action for the settlement of the affairs of a partnership, in which a receiver was appointed upon notice and motion, supported by affidavits. Brewer, J. is reported to have said:—"It is objected that the petition contains no averment that there was danger that the property would be wasted or injured before the answer, or before the trial of the case. Such an averment was entirely unnecessary. The showing of the necessity for a receiver need not be in the petition. The appointment of a receiver is a provisional remedy. It is an auxiliary proceeding. It is not the ultimate end or object of the suit. \* \* \* All that the pleadings need disclose is, that the action pending is one of a class in which the statute says a receiver may be appointed."

(98) See *Evans v. Coventry*, 5 DeG. M. & G. 911.

power to grant the ultimate relief asked for in the suit, it will not appoint a receiver.<sup>99</sup>

Again it is not necessary that the plaintiff should ask for the appointment of a receiver in specific terms. The Court would grant it if it appears that it is the proper relief to be granted in the suit. Thus, although the application specifically asks for some other remedy, the Court may make an order for receivership if the facts as found require a receiver. Only facts showing the necessity for the same should be stated. ship and not the other remedy specifically prayed for.<sup>99-a</sup>

The only duty of the applicant is to lay all the material facts before the Court; and the Court would then grant the right remedy suitable to the circumstances of the case.

Court will grant appropriate relief, whatever the application asks for. The Court will grant the relief appropriate to the case whatever be the relief which the applicant specifically asks for.<sup>99-b</sup>

Thus where the application was for the appointment of a receiver, the Court may grant a temporary injunction, when the latter would be the proper remedy in the case.<sup>100</sup>

So also, where the application is made for a temporary injunction the Court may grant a receiver.<sup>101</sup>

(99) *People v. Weigley*, (Ill.) 49, N. E. R. 300; Alderson on Receivers, 1905, S. 119, p. 155.

(99-a) See *Dan Prasad v. Gopi*, 11 A.L.J. 973. See also *Chandidat v. Padmanand*, 22 C. 459.

(99-b) Where an application for attachment of a debt is made, the Court is not bound to satisfy itself as to the existence of the debt, and if it appoints a receiver in consonance with r. 189 of the Civil Rules of Practice (Madras), it does not fail to exercise a jurisdiction vested in it by law or act with material irregularity in the exercise of such jurisdiction within the meaning of S. 115 of the Civ. Pro. Code. *Suryanarayana v. Venkata Rathamma*, 27 Ind. Cas. 812.

Where property is *in media* after the death of the last owner and when a dispute exists as to who is entitled to that property, the proper procedure is to appoint a receiver, whether the petition does or does not specifically ask for the same. *Sivaji Rajah Sahib v. Aiswariyanandaji Sahib*, 29 M.L.J. 209.

Where, on the dissolution of a partnership, the appointment of a receiver to wind up the accounts of the partnership was opposed by some partners on the ground of inconvenience, Held that inconvenience to the parties is an inevitable incident when partners fall out and is a disadvantage of carrying on business in partnership. *E. F. Dover v. E. S. Dover*, 8 Bur. L. T. 57. Held also that the usual way of guarding the divergent interests of the partners when they fall out is by appointing a receiver and ordering the goodwill of the business and stock-in-trade to be sold, the partners being at liberty to bid at the sale. *E. F. Dover v. E. S. Dover*, 8 Bur. L. T. 57.

(100) See *Chandidat v. Padmanand*, 22 C. 459.

(101) *Dan Prasad v. Gopi*, 11 A.L.J. 973.

Similarly a prayer in a petition to discharge a receiver and put the parties in possession may be treated as a prayer for appointment of the petitioners as receivers of the properties they claim possession of.<sup>102</sup>

Again although a receiver is claimed generally and as regards all the properties comprised in the suit, the Court may grant it in a limited form and only with regard to the property which it finds necessary to safeguard.<sup>103</sup>

Thus, in a suit for partition where a receiver is prayed for regarding all the property comprised in the suit the Court may grant the application either with regard to the plaintiff's share of the rents and profits alone or with regard to the whole estate as the circumstances may require.<sup>104</sup>

The Court may make order in the alternative, requiring defendant to satisfy plaintiff's demand, or in default thereof that a receiver be appointed.<sup>105</sup>

Sometimes the Court instead of appointing a receiver as prayed for may require the person in sole occupation to furnish proper security, or it may ask him to pay an occupation rent.<sup>106</sup>

So also, the Court in appointing a receiver, may annex a condition, that he ought not to act until an existing receiver is discharged.<sup>107</sup>

The defendant's principal pleading being his written statement, the formal statement of his defence to the allegations contained in the plaint has a special weight in influencing the action of the Court on an application for the appointment of a receiver. A written statement fully denying all the equities contained in the plaint amounts in practice, on the hearing of such application, to a *prima facie* case in favor of the defendant, and, where such an answer is filed, the application will be refused unless the plaintiff introduces, in support of his allegation, such evidence as will overcome the denials of the answer.<sup>108</sup>

In an English case, when dealing with a receivership application, the Lord Chancellor said: "A case was, I thought, made out by the

(102) *Subramania Iyer v. Muthulakshmi Ammal*, M.W.N. 1912, 1208.

(103) See *Major v. Major*, 8 Jur. 797.

(104) See *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(105) See, for such a case, *Curling v. Townshend*, 19 Ves. 628.

(106) See *Suprasanna Roy v. Upendra Narain Roy*, 18 C.L.J. 638=18 C.W.N. 533=22 Ind. Cas. 601.

(107) *Salt v. Cooper*, 16 C. D. 544 (554); *Daniell's Chancery Practice*, Vol. II, 7th Ed., p. 1411.

(108) *Simmons v. Henderson*, 1 Freem. Miss. 493; *Henn v. Walsh*, 2 Edw. Ch. N. Y. 129; *Buchanan v. Comstock*, 57 Barb. 581.



bill, but the answer has overthrown it, and the hand of the Court must be removed."<sup>109</sup>

In an American case, the Court said in the course of the judgment, "It is a well established rule that the plaintiff, the equities of whose bill have been fully met and denied, is not entitled to the appointment of a receiver unless he overcomes the denials in the answer by further proof in support of his bill. In other words, where the equities of plaintiff's bill have been fully met and denied by a sworn answer on behalf of the defendant, the Court has no discretion and its appointment of a receiver in such a case is unauthorized."<sup>109-a</sup>

Just as the allegations in the statement may be used in favour of the defendant, so also, if it discloses some defect in defendant's title, or some presumption in favour of the plaintiff's contention, the Court will grant a receiver all the more readily.<sup>110</sup>

When a person suing on behalf of a class obtains an order for a receiver, any member of the class who objects to such appointment should apply by summons to be made a defendant in the suit. It is only then that he may take steps to get rid of the order or apply to take the conduct of the proceedings out of plaintiff's hands. He would not be allowed to intervene simply by appealing against the order of appointment.<sup>111</sup>

Application by plaintiff suing on behalf of a class — Objection by a member of the class — Procedure.

The general practice is to ask for the appointment of receiver at an early stage of the suit. In fact, where the circumstances necessitating the receivership had existed at the time of the institution of the suit, plaintiff's negligence in not making an application in the proper and at the early stage of the suit would be deemed to be a bar to his getting the relief at a later stage. But, in a proper case, the Court has power to make an order for receivership at any stage of the suit. Thus a receiver may be appointed even at the final hearing, although the plaint contains no prayer for such relief.<sup>112</sup>

Application for appointment, when can be made.

Generally in cases of dissolution of partnership, when a receiver is necessary to wind up the former business, the appointment may be made as a part of the decree and for the purpose of carrying it into effect.<sup>113</sup>

(109) *Drury v. Roberts*, 2 Md. Ch. 157. See also *Voshell v. Hynson*, 26 Md. 83.

(109-a) *Sweeney v. Mayhew*, 56 Pac. R. 85.

(110) *Payne v. Atterbury*, Harring Mich. 414.

(111) *Watson v. Cave*, (1881) 17 Ch. D. 19, C. A.; *Fraser v. Cooper, Hall & Co.*, (1882) 21 Ch. D. 718; *Debenture Corporation v. de Murieta (C.) & Co., Ltd.*, (1892) 8 T.L.R. 496.

(112) See the observations of the Vice-Chancellor in *Osborne v. Harvey*, 1 Y. & C. C. 116.

(113) *Shutle v. Hoffman*, 13 Tex. 678.



Unexplained delay in bringing the suit and asking for the receivership and acquiescence in the wrong complained of will disentitle the plaintiff to relief by appointment of receiver.<sup>114</sup>

Although the Court may have appointed a receiver on the application of the plaintiff and after hearing the defendant, yet it is open to it to entertain an application to re-open and re-hear the matter and to permit the defendant to adduce evidence which he could not have produced at the former hearing.<sup>115</sup> If, on taking such additional evidence, the Court finds that the order of appointment of receiver ought not to have been made or that it is not necessary at the time of, and under the circumstances existing at, the re-hearing, the Court may set aside the original order of appointment and discharge the receiver.<sup>116</sup>

Although the plaintiff's application for a receiver is dismissed, he may make a second application, if the circumstances have so altered as to require the appointment of one. But a receiver will not be appointed on a subsequent application upon a simple notice to the other party upon the same papers as were filed during the time of the first petition that was dismissed, and without further affidavits or additional evidence showing the necessity for the relief. So also, the defendant can ask for a re-hearing of the petition on the ground that the altered state of facts do not necessitate the continuation of the receiver.<sup>117</sup>

(114) The following observations of Caspersz and Doss, JJ. may well be noted in this connection :—"There only remains the matter of delay and acquiescence. The facts, and the dates, already recited, show that the plaintiffs have delayed for over 4 years to bring this suit, and, by such conduct, have acquiesced in the continued possession of Ram Din, the alleged adopted son of Kanta Prosad, and the possession of his widow. That is sufficient to negative the success of the application now made which, we may add, might be made in almost any suit for the possession of landed property." As observed in one of the English cases, "the plaintiffs are the masters of the litigation. If, in addition to that advantage, we were to anticipate their success in the present action, we should be placing the defendant in a position in which the circumstances of this case do not justify us in placing her." *Srimati Mathiria Debya v. Shibdayal Singh Hajari*, 14 C.W.N. 252 (255)=5 Ind. Cas. 27 (Per Caspersz and Doss, JJ.) See also *Sivagnanathammal v. Arunachalam Pillai*, 21 M.L.J. 821 (823)=2 M.W.N. 1911, 75=11 Ind. Cas. 370=10 M.L.T. 490; *Nga Kyi v. Mi Sin* U.B.R 1908, 2nd Quarter, Civil Procedure, p. 17.

(115) *Belmont v. Erie R. Co.*, 52 Barb. 637.

(116) (*Ibid*).

(117) See High on Receivers, Ss. 91, 92, pp. 116-117; Woodroffe on Receivers, Tagore Law Lectures, 1897, and 2nd Ed., 1910, pp. 65, 66.

The Court may on rejecting an application for a receiver give leave to the applicant to renew his motion upon additional proof, if it appears that he may, by obtaining new proof, present a strong case for the relief sought. (*Devlin v. Hope*, 16 Ab. Pr. 314); Even after a hearing and refusal the Court may grant a receiver when an altered state of facts is presented showing an appropriate case for the relief. (*Attorney-General v. Mayor of Galway*, 1 Mol. 95). "But when the application has once been before the Court and has been denied, a

If an interlocutory order is wrongly refused by one Judge, the proper course is to apply for a review or to appeal from it; not to seek to obtain the order by resorting to another Judge, even though arguments should then be forthcoming which were not put before the first Judge.<sup>118</sup>

Renewal of application before another Judge.

When a receiver has been appointed over a particular property on behalf of, and to protect the interest of, some one creditor or a class of creditors, and the Court finds that some other creditors also are entitled to some interest in such property, and they also ask for the appointment of a receiver, the Court, instead of making a new appointment, would simply extend the original receivership for the protection of these other parties who are also interested in the same subject-matter. The purpose of such extension is mainly to save the expense of a new appointment.<sup>119</sup>

Extension of receivership—Practice.

(i) For the protection of other interests in the property comprised in the original receivership.

new appointment.<sup>119</sup>

So also, where the receiver originally appointed was only over a portion of the estate, and the Court deems it necessary that the receiver should be appointed over the other portions as well, the Court may, instead of making a new appointment, extend the original receivership over the residue of the estate also.<sup>120</sup>

(ii) For the purpose of getting hold of other property of the defendant.

receiver will not be appointed upon a subsequent application upon a single notice for that purpose, founded upon the same papers as before, without affidavits or additional proof, showing a necessity for the relief. And this rule holds good, even though the Court may have intimated, on the former application, that a receiver might afterwards be granted if circumstances should warrant the relief." (*Fenton v. Lumberman's Bank Clarke*, Ch. 360); High on Receivers, S. 91, p. 116; Alderson on Receivers, 1905, S. 110, p. 147. See also *Motivahu v. Premvahu*, 16 B. 511 (513).

(118) *Motivahu v. Premvahu*, 16 B. 511 (513). The following observations of Farran, J., in the course of the judgment may also be noted:—"It is true that the previous decision is not such a decision as to enable the defendants to raise the plea of *res judicata*. No question of the right of the plaintiff has been decided. His Lordship simply refused, at that stage of the case and in that proceeding, to entertain the plaintiff's application. The present application is, however, the same as the former one, and is based upon substantially the same allegations of fact; and the same reasons exist now, as then existed, for refusing to entertain it. Under these circumstances, though the jurisdiction of the Court to entertain the application is not ousted by the former proceedings, it would be contrary to the usual procedure and practice of the Court for one Judge to make an order which has been refused by another Judge, even though arguments should be urged before him which were not urged before the Judge to whom the first application was made. If an order is wrongly refused, the proper course to seek is to review it, or to appeal from it; not to seek to obtain the order by resorting to another Court. For these reasons I must refuse to make the order asked for by the notice of motion." Per Farran, J., in *Motivahu v. Premvahu*, 16 B. 511 (513).

(119) *Coshet v. Mahon*, 2 Jo. and Lat. 671.

(120) Where there is an existing receiver the judgment-creditor may obtain the benefit of his appointment; thus, a judgment-creditor obtained, upon terms, a charge on partnership

Again when a receiver has been appointed in one suit and an application for the appointment of another receiver over the same property is made in another suit in the same Court, the Court, in order to avoid a conflict of duties between the two receivers, would prefer, as a general rule, to extend the receivership in the first suit to the subsequent suit also.<sup>121</sup>

(iii) For the purpose of avoiding conflict of duties between different receivers.

On the same principle, when a receiver has been appointed in one Court with regard to certain property, and an application is made to another Court in another suit for the appointment of another receiver over the same property, the proper course for the Court is to make the receiver already appointed to act as a receiver in the subsequent suit also. This would be done to avoid a conflict of jurisdiction between the two Courts.<sup>122</sup>

(iv) For the purpose of avoiding conflict of jurisdiction between different Courts.

The object of making an extension of the original receivership instead of creating a new receiver is either to avoid unnecessary expense<sup>123</sup> or avoid conflict of functions between different receivers<sup>124</sup> or to prevent conflict of jurisdiction between two Courts.<sup>125</sup>

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assets in the hands of a receiver appointed in a partnership action; (*Kewney v. Attrill*, 34 C. D. 345) and in a debenture-holder's action the existing receiver was appointed receiver of property not included in the previous order. *Hope v. Croydon, &c., Tramways Co.*, 34 C.D. 730. See also Daniell's Chancery Practice, Vol. II, 1901, p. 1411.

(121) *Khubsurat Koer v. Sarada*, 14 C.L.J. 526=12 Ind. Cas. 165. See also *Madaneswar Singh v. Mahamaya Prosad*, 15 C.W.N. 672=13 C.L.J. 487=9 Ind. Cas. 1027. "A receiver does not represent the plaintiffs in a suit, and the court should not in a subsequent suit displace a receiver appointed in a prior suit, affecting the same subject-matter. This we state as a general rule of convenience, and do not mean to say that under some circumstances it might not be proper. The proper course, as a general rule of practice, is to extend the receivership in the first suit over the second, subject to the legal and equitable claims of all parties, and the rights of the parties in each suit are substantially the same as if different persons had been appointed at the several times when such receivership was granted. If, however, a different receiver is appointed in the second suit, then the plaintiffs may claim that the receiver in the former shall deliver to the receiver appointed in his suit." *State v. Jacksonville, Pensacola R. Co.*, 15 Fla. 201 (Per Curiam).

(122) See *Madaneswar Singh v. Mahamaya Prosad*, 15 C.W.N. 672=13 C.L.J. 487=9 Ind. Cas. 1027; *Bidya Prosad v. Asrafi*, 17 C.W.N. 1070=20 Ind. Cas. 269=40 C. 962. In some cases it may be necessary to determine the priority of appointment between two receivers appointed by different courts over the same properties on the same day. In such cases, the court will enquire even into the fractions of a day in order to determine the actual priority of appointment (*People v. Central City Bank*, 53 Barb. 412; 35 How. Pr. 428) although for many purposes Courts will not take into consideration fractions of a day.

(123) See Cases (i) and (ii) *supra*.

(124) See Case (iii) *supra*.

(125) See Case (iv) *supra*.

In all such cases, the extension of the receivership has the same effect as the appointment of a new and an original receiver.<sup>126</sup>

And the rights of the parties in each suit would, in effect, be the same as if different receivers had been appointed.<sup>127</sup>

The order of the Court appointing a receiver must state in distinct terms over what property or fund the receiver is appointed. It is only then that persons dealing with the receiver may know what property is in the possession of the Court through its officer.<sup>128</sup>

When notice has been served of an application for the appointment of a receiver of certain specified properties and under specified conditions, the Court will not extend the order beyond the terms of the notice.<sup>129</sup>

The purpose of granting an order for the appointment of a receiver being the preservation of the property pending litigation and the safeguarding of the interest of the party who shall ultimately be found to be entitled to the property in dispute, it follows as a necessary consequence, that the order of appointment should receive a liberal and a beneficial construction, so as to serve the purpose for which the order was made in as best and effective a manner as possible. Thus in a recent case which came before the Supreme Court of the United States of America a receiver was appointed over the assets of a corporation "with the power to take possession of all property of the defendant in whose possession soever it may be found, except it may be in custody under the writ or order of some other Court." The receiver presented

(126) See *Coshet v. Mahon*, 2 Jo. & Lat. 671.

(127) *Fa State v. J. P. & M.R. Co.*, 15 Fla. 201: High on Receivers, 4th Ed. S. 93, p. 117.

(128) Per Lord Langdale in *Crow v. Wood*, 13 Beav. 271. An order of appointment which directs a receiver to take possession of all the property and assets of an insolvent has been held to be sufficiently broad to include within its scope the possession of real estate belonging to the insolvent, although neither the petition nor the motion upon which the receiver was appointed describes or refers to the real estate. *Cheney v. Maumee Cycle Co.*, 64 Ohio. St. 205. But an order of appointment may refer to the pleadings or to some document in the case, which describes the property. Daniell's Chancery Practice (5th Amer. Ed.) 1737. In another case a receiver of the "incomes of the outstanding trust property in the pleadings mentioned" has been held not to be sufficiently distinct and explicit within the meaning of this rule. *Crow v. Wood*, 13 Beav. 271. But a receiver may be appointed to take charge of "all the assets of a corporation." *Hale-Berry Co. v. Diamond State Iron Co.*, 94 Ga. 61, 22 S. E. 217. See also Forms given in the Appendix *infra*.

(129) 1 Grant's Chancery Practice 144.



the order to the treasurer of the corporation and demanded the funds of the corporation in his hands. The treasurer declined to deliver the funds on the ground that the order was not sufficiently specific to justify him in so doing. The receiver applied to the Court for an order upon the treasurer to show cause why he should not pay over the funds or be punished for contempt. *Held*, that if, in making the appointment the Court proceeded upon an insufficient evidence, the order may be erroneous and subject to revision, but the order is not void nor open to collateral attack, and that the treasurer, having notice of the order, was bound in duty to obey it and turn over to the receiver, on demand, the company's property, which included money in his possession. The observations of the Court in the course of the judgment are important as showing the liabilities of persons holding positions analogous to that of the treasurer of the corporation in the present case. The Court said: "A decent respect for the authority of the Court would have dictated the propriety of an appeal to it for the solution of any real doubt as to the extent of the order. For an agent of the company to act upon a questionable and technical construction of the words of the order, and place himself in a position in which he cannot comply if it is determined that his interpretation is wrong, is rashly contemptuous. That he has proceeded under the advice of counsel may mitigate, but cannot excuse the offence.<sup>130</sup> He, nevertheless, knew that he was disobeying the order, unless its true intent should happen to be his restrictive interpretation."<sup>131</sup>

In another case a receiver was authorized to "collect all moneys due, secure liens, invest and apply same for the benefit and advantage of said infants." *Held* that the order gave authority to the receiver to collect money due to the infants and invest it without further authority from the Court.<sup>132</sup>

Similarly an order appointing a receiver "for the property and assets of a company of every kind and description, wherever located," was held to embrace all the real estate of the corporation.<sup>133</sup> But an order giving to receivers of a company the authority "to compromise, adjust and settle, in their best discretion," claims against the company, was held not to confer authority to pay the claims of judgment-creditors in full.<sup>134</sup>

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(130) *Cape May, etc., R.R. Co. v. Johnson*, 35 N.J. Eq. 422.

(131) *Edrington v. Pridham*, 65 Tex. 612, 616 (1886), citing *Dean v. Thatcher*, 32 N. J.L. 470.

(132) *Alston v. Massenburg*, 125 N.C. 582, 34 S.E.R. 63.

(133) *Cheney v. Maumee Cycle Co.*, 64 Ohio St. 205, 60 N.E.R. 207.

(134) *Mercantile Trust Co. v. Baltimore & Ohio Railroad Co.*, 79 Fed. R. 389.



Where the order of appointment gave the receiver "full power to collect the rents, take care of and preserve the same," it was held that he was authorized thereby under such order to collect the rents to become due after the appointment as well as those due at the date of the appointment.<sup>135</sup>

In a suit for partition pending before a District Judge, an application was made by the defendant for temporary injunction. The District Judge, thereupon, directed that until the determination of the suit, the plaintiff shall have the control and management of a portion of the property in suit and the defendant of another portion. *Held*, that the order of the District Judge was in effect an order appointing receiver and was covered by the provisions of O. XL, r. 1, of the Civil Procedure Code.<sup>135-a</sup>

The Court in passing orders upon an application for receivership may make the order in the alternative, as for instance, that the defendant be required to satisfy the plaintiff's demand within a limited time, in default of which a receiver shall be appointed.<sup>136</sup>

Or, it may order that the defendant do give a bond as security for plaintiff's demand, and in default of which a receiver is to be appointed.<sup>137</sup>

Permanent receiver of endowed property

It has recently been held by the Calcutta High Court that the Court has no authority to place an endowed property permanently in the hands of a

Receiver.<sup>137-a</sup>

(135) *Cox v. Volkert*, 86 Mo. 505.

(135-a) *Dan Prasad v. Gopi Kishen*, 11 A.L.J. 973. See also Alderson on Receivers, 1905, S. 145, pp. 177-178.

(136) See *Curling v. Townshend*, 19 Ves. 628.

(137) See Chap. III, p. 60 *supra*. As to conditional orders of appointment, see Alderson on Receivers, 1905, S. 147, pp. 178, 179.

(137-a) *Raj Krishna v. Bepin Behary*, 17 C.L.J. 189 (190).

## CHAPTER X.

### RECEIVER'S BOND AND SECURITY.

General rule as to requiring security from Receiver.

Necessity for requiring security—Reason of the rule.

Appointment not complete until security is given.

Nor does title vest in receiver until bond is completed.

Where the order of appointment directs receiver to take possession at once, appointment complete though security be not given.

When order of appointment is silent as to security, appointment is complete when possession is taken under it.

When security is given, order of appointment relates back to the date when the order was first made.

Order silent as to security—Possession of receiver valid.

Practice of the Indian High Courts as to giving security.

Amount of security required.

Amount of security when receiver appointed to collect debts due to the estate.

Amount of security reduced when receiver pays part of the funds into Court.

Nature of security required.

What is sufficient security.

- (i) Security of guarantee society.
- (ii) Security of a foreign guarantee company.
- (iii) Security-bond of foreign society.
- (iv) Security of Government stock.
- (v) Security of a party to the suit.

What is not sufficient security.

- (i) Assignment of mortgage.
- (ii) Security of a partner.
- (iii) Security of a solicitor in the suit.

Doubt as to sufficiency of security offered—Procedure.

Necessary qualifications for the surety.

- (i) Competency to contract.
- (ii) Solvency.
- (iii) Residence in the country.

Power of Court to accept or reject any person offered as surety.

Distribution of security over several sureties.

Sureties may be bound in unequal sums.

Where security may be dispensed with.

If no security is required the order must specifically state so.

Cases where security may be dispensed with.

- (i) Where no salary is paid to the receiver.
- (ii) Where the person appointed receiver has got only to incur expenditure.
- (iii) When receiver is not to be put into possession or receive any property.
- (iv) Where amount collected is very small.
- (v) In the case of Court receiver.
- (vi) In the case of Interim Receivers.
- (vii) In the case of Receiver nominated by testator.
- (viii) In the case of unpaid vendor acting as Receiver.
- (ix) In case of equitable execution, where judgment-creditor himself acts as receiver.
- (x) Receiver being in previous possession and management—Consent of parties.
- (xi) Trustee acting as receiver without salary.

Additional security, when may be required.

Original security, when may be reduced.

Same person appointed receiver in different suits but with regard to same property—  
One security will be sufficient.

Where person appointed receiver has already given security in another capacity.

Regularity and validity of receiver's bond, not to be questioned collaterally.

Agreement giving control to surety over money in receiver's hands improper.

Expenses incurred with reference to completion of security.

Receiver directed to give security omitting to do so, but undertaking duties of receiver.

Enforcing receiver's bond.

Extent of surety's liability.

AS a general rule, where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed must first give security, to the satisfaction of the Court or Judge, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct.<sup>1</sup>

So also where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or Judge may adjourn the cause or matter then pending, in order that the person named as receiver may give security, and may thereupon direct such judgment or order to be drawn up.<sup>2</sup>

(1) See Rules of the Supreme Court in England. O. L., r. 16.

(2) O. L., r. 17.

Similarly O. XL, r. 3 of the Code of Civil Procedure (Act V of 1908) declares that "every receiver shall furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property." <sup>3</sup>

The receiver is the executive officer of the Court and is appointed for the preservation and management of the property which is the subject-matter of the suit, pending the ultimate decision of the true title to such property.

Necessity for requiring security—Reason of the rule.

The appointment of the receiver is for the ultimate benefit of the party to whom the Court shall award the property by its decision. It is this ultimate benefit of the party rightfully entitled that the Court has constantly in view in all receivership proceedings. This same ultimate benefit also renders it necessary that the Court should take the necessary steps to safeguard the estate from the injurious consequences of the receiver's illegal or negligent acts and omissions. The Court that appoints a receiver to protect the property from the wrongful acts of others would not allow it to be damaged by the unlawful acts of its own officer. Hence, it is that, except in extreme cases where there are strong grounds for dispensing with the necessary bond and security, the Court imposes as a condition of appointment that the receiver do give a bond, generally with one or more sureties for the due and faithful discharge of his duties. This necessity for taking proper security also arises from the fact that the parties to the suit have no recourse to the Court itself for the wrongful acts or omissions of its receiver.<sup>4</sup>

Where the receiver is appointed subject to his giving security, the appointment is not deemed to be complete, so far, at any rate, as it affects third parties, until the security has been given.<sup>5</sup>

Appointment not complete until security is given.

The receiver's title, his authority to act and his right of possession to the property are generally dependent on and deemed to accrue only after his giving the bond or security required by the order of his appointment.<sup>6</sup>

Nor does title vest in receiver until bond is completed.

(3) See Act V of 1908, O. XL, r. 3.

(4) See Alderson on Receivers, 1905, S 152, p. 183.

(5) *Edwards v. Edwards*, (1876) 2 Ch. D. 291.

(6) *Johnson v. Martin*, 1 Thomp. & C. (N. Y. Supreme Court) 504. Hence a failure to execute the bond in due form, as required by the order, is ground for nonsuit in an action brought by the receiver in his official capacity. *Morgan v. Potter*, 17 Hun. 403.

But it has been held a mere informality in the bond will not affect the receiver's title or authority, and such informality cannot be taken advantage of in an action brought by the receiver against third parties.<sup>7</sup>

Where the order of appointment directs the receiver to take possession at once, appointment complete though security be not given.

But if the order of appointment directs the receiver to take possession at once, and does not expressly direct security to be given, the possession of the receiver will be lawful and valid.<sup>8</sup>

When order of appointment is silent as to security, appointment is complete when possession is taken under it.

If the order is silent as to the receiver giving security, his appointment is complete when the order is made and possession has been taken under it.<sup>9</sup>

When security is given order of appointment relates back to the date when the order was first made.

When once security has been given, the order of appointment relates back to the time when it was actually pronounced.<sup>10</sup>

Thus when a receiver is appointed of the rents of land at the instance of a judgment-creditor, though it was made conditional on the receiver's giving the necessary security, the order of appointment operates as an immediate delivery of the land in execution; and, when the security was afterwards given, the order was held to relate back to the date when it was actually made.<sup>11</sup>

To this rule there appears to be an exception in the case of personality in England. It has been stated that in the case of personality when the order specifically states that a person is to be appointed a receiver "upon his giving security," his appointment is not effectual until the

(7) *Morgan v. Potter*, 17 Hun. 403.

(8) In such a case a judgment-creditor will not subsequently be allowed to levy execution, notwithstanding that security has not been given. (*Morrison v. Skerne Ironworks Co., Ltd.*, (1889) 60 L. T. (588). As to the case where the receiver is not empowered to act at once and his appointment is "upon first giving security," See *Defries v. Creed*, (1865) 11 Jur. (N.S.) 360, 607; *Edwards v. Edwards*, (1876) 2 Ch. D. 291, C.A.; *Re Rollason*, *Rollason v. Rollason*, (1887) 56 L.T. 303; *Re Roundwood Colliery Co.*, *Lee v. Roundwood Colliery Co.*, (1897) 1 Ch. 373, 393 C.A.; *Ridout v. Fowler*, (1904) 1 Ch. 658; affirmed, (1904) 2 Ch. 93, C.A.

(9) *Morrison v. Skerne Iron Works Co.*, (1889) 60 L.T. 588.

(10) *Ex parte Evans*, *In re Watkins*, (1879) 13 Ch. D. 252.

(11) *Ex parte Evans*, *In re Watkins*, 13 Ch. D. 252; and see *Re Shephard*, 43 Ch. D. 133.



security is given. It is a conditional appointment, and the condition must be fulfilled before the appointment can be said to be complete.<sup>12</sup>

Order silent as to security—Possession of receiver valid.

If the order makes no mention as to security but simply directs the receiver to take possession, and he takes possession under the order, his possession is valid though no security has been given.<sup>13</sup>

Practice of the Indian High Courts as to giving security.

The procedure with regard to the giving of security as it prevails in the Indian High Courts is as follows:—"On an order being made for the appointment of a receiver subject to his giving security to the satisfaction of the Registrar, the order is drawn up and filed in the Registrar's office. An office copy is then obtained and filed in the Reference and Account Department of the Registrar's office. Upon the office copy being filed, the Registrar issues notice to all parties to appear before him on a day to be fixed and to proceed under the order. The matter comes on as a reference on the day fixed, and the Registrar proceeds to enquire into the amount of assets likely to come to the hands of the receiver and fixes the amount of security to be furnished. In doing this regard will be had to the nature of the property and the periods at which the receiver is to pass his accounts and pay balances due from him and to the amount of the balances which are likely to remain in his hands before payment. Sometimes the amount of the security may be reduced by deposit of securities in the Bank of Bengal endorsed in a non-negotiable form. Security is generally given by bond. The sureties who have been proposed, and who must be resident within the jurisdiction, are examined, and upon the Registrar being satisfied as to the sufficiency of the sureties, a bond is executed by the receiver and his sureties in favour of the Registrar in a prescribed form. On this being done the Registrar then certifies to the Judge that security has been furnished, and thereupon the order for appointment of the receiver takes effect."<sup>14</sup>

The amount of security that will be required of the receiver is largely left to the discretion of the Court. To a great extent, it depends on the value of the property entrusted to the receiver, the amount of income it would yield, the length of time during which the receiver is expected to be in possession, and such other matters. In England, security is usually

Amount of security required.

(12) Per Farwell, J. in *Ridout v. Fowler*, (1904) 1 Ch. 658, at p. 662; affirmed. (1904), 2 Ch. 93; and see also *Fahey v. Tobin*, (1901) 1 Ir. R. 511.

(13) *Morrison v. Sherne Ironworks Co.*, 60 L.T. 588.

(14) Woodroffe on Receivers, 2nd Ed., 1910, pp. 67, 68.

required for double the amount of the annual rental value of the estate, the income of which the receiver is to collect. <sup>15</sup>

Amount of security when receiver appointed to collect debts due to the estate.

Where the receiver is appointed to collect outstanding debts due to the estate, security is required to the full, or something beyond the full, amount which is ordered or expected to be received. <sup>16</sup>

Where part of the funds are ordered to be paid into Court for safe custody, security will be required only for the rest. <sup>17</sup>  
 Amount of security reduced when receiver pays part of the funds into Court. This is sometimes done with a view to reduce the amount of the security. With the same view the receiver may also be restricted from getting in mortgage debts. In such cases the mortgagors may pay the money direct into Court. <sup>18</sup>

Just as in the case of the amount of security, so in the case of the kind of security that will be required of a receiver, much is left to the discretion of the Court. The Courts accept or reject the security offered on a consideration of all the circumstances of the case. No definite and invariable rule can be laid down on this subject.

What is sufficient security in each case, is left to the discretion of the Court, to decide. The same security may be accepted in some cases, but rejected in others. The Court acts with due regard to the special circumstances of each case, and the main object that the Court has in view is the safety of the estate which it places in the hands of its receiver.

(i) Security of guarantee society.

It is the modern practice of Courts in England to accept the security of a guarantee society as sufficient. <sup>19</sup>

Before accepting the bond of a guarantee society as a sufficient security, the Court may require the secretary or other officer of the society to make an affidavit as to the solvency of the society. <sup>20</sup>

(15) Seton on Judgments and Orders, 7th Ed., p. 741.

(16) Daniell's Chancery Practice, 1432.

(17) *Poole v. Wood*, Seton on Judgments and Orders, 7th Ed. p. 741; *Ex parte Clayton*, 1 Russ. 476; *Re Eagle*, 2 Fh. 201.

(18) See Kerr on Receivers, 6th Ed., 1912, p. 165.

(19) See Kerr on Receivers, 6th Ed., pp. 164, 166. See also *Re Spiritine*, W.N. 1902, 124; *Colmore v North*, 42 L.J. Ch. 4. Certain guarantee companies are accepted as sureties, and indeed any guarantee company may be accepted proof of whose respectability is given to the satisfaction of the Court.

(20) See Kerr on Receivers, 6th Ed., 1912, p. 166.

In the case of a foreign guarantee company, its bond may be accepted only on condition of its submitting to the jurisdiction of the Court that appoints the receiver, and also signs an address for service of process within the jurisdiction of such Court.<sup>21</sup>

(ii) Security of a foreign guarantee company.

(iii) Security-bond of foreign society.

(iv) Security of Government stock.

(v) Security of a party to the suit.

What is not sufficient security  
(i) Assignment of mortgage.

(ii) Security of a partner.

(iii) Security of a solicitor in the suit.

Doubt as to sufficiency of security offered—Practice.

Necessary qualifications for the surety:

(i) Competency to contract:

(ii) Solvency.

The bond of a foreign company may in a proper case be accepted as sufficient security. It has been held that there is no rule of practice prohibiting the acceptance of such security.<sup>22</sup>

The transfer of Government stock would be very proper security.<sup>23</sup>

A party to the suit may be a proper surety.<sup>24</sup>

It has been held that it is not proper to take as security an assignment of a mortgage belonging to the receiver, instead of the usual security.<sup>25</sup>

A person who is related to the receiver as a partner in the same firm is not a proper surety.<sup>26</sup>

So also a solicitor in the suit is not a proper surety.<sup>27</sup>

When there is any doubt as to the sufficiency or solvency of the security offered, the Court would hear the opposing parties in relation thereto.<sup>28</sup>

The proposed sureties must be competent to contract and be solvent. The receiver would be required to testify from time to time that the sureties continue to be solvent.<sup>29</sup>

The sureties upon a receiver's bond must be real and substantial persons.<sup>30</sup>

(21) See Resolution of the Judges of the Chancery Division in England, dated 5th July 1909.

(22) *Aldrich v. British Griffin Chilled Iron and Steel Co.*, (1904) 2 K B. 850.

(23) *Betagh v. Concannon*, Smith on Receivers, p. 17.

(24) See Halsbury's Laws of England, Vol. XXIV, S. 692, p. 372.

(25) See *Mead v. Lord Orrery*, 3 Atk. 237.

(26) See Daniell's Chancery Practice, 1689.

(27) *Ibid.*

(28) See Alderson on Receivers, 1905, p. 187.

(29) See Halsbury's Laws of England, Vol. XXIV, S. 692, p. 372.

(30) *Smith v. Scandrett*, W. Black 444; *Beardmore v. Phillips*, 4 Maule & Sel. 173.

(iii) **Residence in the country.** Persons offered as sureties should generally be persons residing in the country in which the Court appointing the receiver is situate.<sup>31</sup>

But in the case of companies offered as sureties some greater latitude is allowed.

It is not absolutely necessary that the sureties be citizens of the State in which the action is pending and the Court may lawfully accept non-resident sureties.<sup>33</sup>

**Power of Court to accept or reject any person offered as surety.**

It is the right of the Court to accept or reject arbitrarily any person proposed as a surety.<sup>34</sup>

**Distribution of security over several sureties.**

Sometimes it so happens that the security required is of so large an amount that it cannot be given by any one person. In such a case it may be distributed among a number of sureties.<sup>35</sup>

**Sureties may be bound in unequal sums.**

The sureties may be bound in unequal sums; and the number of sureties may be increased so as to diminish the amount for which each is to be liable.<sup>36</sup>

**Where security may be dispensed with.**

Although as a general rule the receiver would be required to give security, there are certain special cases when security may not be demanded. It is certainly within the jurisdiction of the Court to dispense with security, if it so deems fit in any particular case.<sup>37</sup>

**If no security is required the order must specifically state so.**

If no security is intended to be taken from the receiver this fact should be so stated in the order of appointment; and similarly, if no security is intended to be demanded until a particular time, the person obtaining the order would be made responsible for the receiver's receipts in the meantime.<sup>38</sup>

(31) See *Cockburn v. Raphael*, (1825) 2 Sim. & St. 453.

(32) See Resolution of the Judges of the Chancery Division in England, dated 5th July, 1900; Yearly Practice of the Supreme Court, 1913, p. 718. *Re Gold Fields of Venezuela*, C. A. cited in *Aldrich v. British Griffin etc. Co.*, (1904) 2 K. B. 850 (852), C. A.

(33) *Taylor v. The Life Association of America*, 3 Fed. R. 465.

(34) See *Alderson on Receivers*, 1905, p. 187.

(35) *Acheson v. Hodges*, (1841) 3 I. Eq. R. 516; *Re M'Donaghs, Minors*, (1876) 10 I. R. Eq. 269.

(36) *Seton on Judgments and Orders*, 7th Ed., p. 777.

(37) For a case where a receiver was appointed without taking security, and where trouble arose therefrom; See *Muthia Chetti v. Orr*, 20 M. 224.

(38) *Per Chitty, J.*, in *Morrison v. Skerne Ironworks Co.*, 60 L. T. 588.

Cases where security may be dispensed with:  
(i) Where no salary is paid to the receiver.

Where no salary is paid to the receiver, the Court may, if it otherwise thinks the case to be a proper one, dispense with the security.<sup>39</sup>

(ii) Where the person appointed receiver has got only to incur expenditure.

So also, it is open to the Court to dispense with the usual security where the party appointed receiver will only have to incur expenditure and has nothing to collect.<sup>40</sup>

Security will also be dispensed with in a case where, from the nature of the duties, there is likely to be more expenditure than income.<sup>40-a</sup>

(iii) When receiver is not to be put into possession or receive any property.

Similarly security may be dispensed with when the receiver is not to go into possession or receive anything.<sup>41</sup>

Where the applicant undertakes to answer for the acts or defaults of the receiver, and where the sums passing through receiver's hands are only very small amounts, the Court may dispense with security.<sup>42</sup>

(iv) Where amount collected is very small.

In the case of the appointment of the Court receiver no bond is required, as that officer gives security upon his entering office in his own bond and that of his sureties who are approved by the Court.<sup>43</sup>

(v) In the case of Court receiver.

In certain cases of special urgency, the Court may appoint the applicant or any other person as interim receiver, until a receiver is appointed on a regular enquiry, or for any other limited period, without any security being demanded, but merely upon the undertaking of the person so appointed, not to deal with the property except under the direction of the Court, and to abide by any order which the Court may think fit to make as to damages or otherwise.<sup>44</sup>

(39) *Gardner v. Blane*, 1 Ha. 381; *Re Prytherch*, 42 Ch. D. 590; See also *Boyle v. Bettws, etc.*, (1876) 2 Ch. D. 726; *Bainbridge v. Blair*, (1841) 3 Beav. 421.

(40) *Hyde v. Warden*, 1 Ex. D. 309 (310); *Boyle v. Bettws, Llantwit Colliery Co.*, 2 Ch. D. 726; *Fuggle v. Bland*, 11 Q. B. D. 711.

(40-a) *Hyde v. Warden*, (1876) L.R. 1 Ex. D. 309.

(41) *Hewett v. Murray*, W.N. 1885, 53; 54 L.J. Ch. 573.

(42) See *Halsbury's Laws of England*, Vol. XXIV, S. 700, p. 374. See also *Riviere on Receivers*, 1912, pp. 113—116.

(43) *Woodroffe on Receivers*, 2nd Ed., 1910, p. 69.

(44) *Taylor v. Eckersley*, 2 Ch. D. 302; 5 Ch. D. 741; *Cash v. Parker*, 12 Ch. D. 293. See also Chapter IX on "Practice and Procedure as to appointment."



If a testator by his will nominates a person to act as receiver of the rents and profits of realty, or if the person nominated by the parties has been employed by the testator in his lifetime as manager of the property, security may be dispensed with, notwithstanding that some of the parties interested are infants.<sup>45</sup>

Where an unpaid vendor and equitable mortgagee applies for a receivership, he being virtually the owner of the property and the property is in immediate danger of destruction, he may be appointed receiver and manager without salary and without security.<sup>46</sup>

In the case of an equitable execution, where the judgment-creditor himself acts as receiver.

In the case of an equitable execution, where the judgment-creditor himself acts as receiver.

(vii) In the case of Receiver nominated by testator.

(viii) In the case of unpaid vendor acting as Receiver.

(ix) In case of equitable execution, where judgment - creditor himself acts as receiver.

(x) Receiver being in previous possession and management — Consent of parties.

If a receiver is satisfactory to all parties except the defendant, and has been in previous possession and management of the estate in controversy, he may be allowed to take the management of the property as receiver under his own individual recognizance.<sup>48</sup>

(xi) Trustee acting as receiver without salary.

Where trustees undertake to act as receivers without salary and to account accordingly, the Court may not demand any security beyond their own recognisances.<sup>48-a</sup>

Additional security, when may be required.

If the estate which is placed in the possession of the receiver increases in value during the receivership, additional security may be required to be given by him.<sup>49</sup>

So also, the death or insolvency of the sureties originally offered and accepted would be good ground for demanding additional or new security from the receiver.<sup>50</sup>

(45) *Hibbert v. Hibbert*, (1808) 3 Mer. 681; *Carlisle (Countess) v. Berkley* (Lord) (1759) Amb. 599; *Wilson v. Wilson*, (1847) 11 Jur. 793, 794. See *Gardner v. Blane*, (1842), 1 Hare, 381.

(46) *Boyle v. Bettws, Llantwit Colliery Co.*, (1876) 2 Ch. D. 726.

(47) *Fuggle v. Bland*, (1883) 11 Q.B.D. 711; *Beamish v. Stephenson*, (1886) 18 L.R. Ir. 319; *Underhay v. Read*, (1887) 20 Q.B.D. 209, C.A.; *Macnicoll v. Parnell*, (1887) 35 W.R. 773 (Engl.).

(48) See *Carlisle v. Berkley*, Amb. 599; *Ridout v. Barrett*, 13 L.J.N.S. Ch. 304.

(48-a) *Bainbridge v. Blair*, (1841) 3 Beav. 421.

(49) *Seton on Judgments and Orders*, 7th Ed., p. 742.

(50) See *Seton on Judgments and Orders*, 7th Ed., p. 742.

Similarly, on the happening of any other event, which would prevent the sureties effectually being proceeded against, the Court would require the receiver to offer fresh or additional security.<sup>51</sup>

New or additional security may also be demanded when the receiver originally appointed during the pendency of the suit, is continued by the judgment to be receiver of the same property even after the judgment; the reason of this rule being that the continuation of the receiver after judgment amounts in fact to a new appointment.<sup>52</sup>

If however, the security originally given is also made applicable to any continuation of the receivership, no fresh security need be given.<sup>53</sup>

But very often when an order is made appointing a receiver no limit of time is fixed, though a limit is always fixed in the appointment of a manager. Where no limit of time is fixed in the order appointing a receiver, it is not necessary for the judgment to direct that he be continued.<sup>54</sup> In such cases no fresh security would be required.

But as a matter of general practice no fresh security is required when the receiver is continued by the decree, the order generally directing that he be continued upon the same security.<sup>55</sup>

Additional security will also be required, where the receivership is extended over properties other than those over which the appointment was originally made.<sup>56</sup>

Where a surety is discharged a substitute must be found by the receiver.<sup>57</sup>

Where a surety dies no fresh security will be required, unless the estate of the deceased surety is insufficient to cover the liability under the recognisance.<sup>58</sup>

Where one of the sureties of a receiver died, not leaving any property, the Court directed a new surety to be appointed.<sup>59</sup>

Just as the Court would require in some cases additional security over and above what was originally given, so, in certain other cases, it may reduce the amount of the original security. Thus, where the property in the hands of

Original security, when may be reduced.

(51) See Seton on Judgments and Orders, 7th Ed., p. 742.

(52) See *Brinsley v. Lynton Hotel Co.*, W.N., 1895, p. 53.

(53) See Kerr on Receivers, 6th Ed., p. 168.

(54) *Davies v. Vale of Evesham Preserves*, W.N. 1895, 105; 43 W.R. 646 (Eng.).

(55) Woodroffe on Receivers, 2nd Ed., 1910, p. 68.

(56) See *Downshire v. Tyrrell*, (1831) Hayes 354; Halsbury's Laws of England, Vol. XXIV, S. 693, p. 373.

(57) *Vaughan v. Vaughan*, (1743) 1 Dick. 90; *Blois v. Betts*, (1760) 1 Dick. 336.

(58) *Averall v. Wade*, (1841). Fl. and K. 341.

(59) *Ibid.*

the receiver decreases in value or where the scope of his receivership is diminished, the Court may make a corresponding reduction in the amount of security.<sup>60-61</sup>

Same person appointed receiver in different suits, but with regard to same property — One security will be sufficient.

When the same person is appointed receiver in different suits, brought by different creditors, but all with regard to the same property, he need not give new security in each action successively, if the security in the original action was approved by the Court as adequate.<sup>62</sup>

Where person appointed receiver has already given security in another capacity.

Although the person appointed receiver has already given security in another capacity and for the discharge of other duties with regard to the same property, security for the receivership will not be dispensed with.<sup>63</sup>

Thus, the liquidator of a company, on being appointed receiver on behalf of debenture-holders, has been made to give security in addition to what he has given as liquidator.<sup>64</sup>

Regularity and validity of receiver's bond not to be questioned collaterally.

The regularity and validity of the bond of a receiver cannot be questioned in a collateral matter.<sup>65</sup>

Agreement giving control to surety over money in receiver's hands improper.

Inasmuch as one of the objects of having sureties is that they may look to the conduct of the receiver and see that he performs his duties diligently, any arrangement by which they are given a control over moneys coming to the receiver's hands, as a sort of indemnity, is highly improper.<sup>66</sup>

The expenses incurred with reference to the completion of the security of the receiver, as also expenses incurred subsequent thereto, are, in the first instance, paid by the receiver, but these sums will be allowed him in passing his accounts.<sup>67</sup>

Expenses incurred with reference to completion of security.

But the premiums paid by the receiver to a guarantee

(60-61) See *Palmer's Company Precedents*, Vol. III, 11th Ed., pp. 602-606.

(62) *Banks v. Potter*, 21 How. Pr. 469.

(63) See *Tottenham v. Swansea Zinc Ore Co., Ltd.*, (1884) 51 L.T. 61.

(64) *Tottenham v. Swansea Zinc Ore Co., Ltd.*, (1884) 51 L.T. 61; *Bartlett v. Northumberland Avenue Hotel Co., Ltd.*, (1885), 53 L.T. 611, C.A.

(65) *Metropolitan National Bank v. Commercial State Bank*, 104 Iowa, 682; 74 N.W. R. 26; See also *Porshnath v. Omerto*, 17 C. 614 (618); *Bissessure Debia v. Sookram*, 15 W.R. 347; and Note 119 in Chapter III, *supra*.

(66) *White v. Baugh*, (1835), 3 Cl. and Fin. 44, 59, 65, H.L.

(67) *Daneill's Chancery Practice*, 7th Ed., p. 1436. See also *Hunter v. Pring*, 8 Ir. Eq. 102.

society which has become his surety will not be allowed, unless he is acting without salary.<sup>68</sup>

The fact that the receiver who is directed to give the necessary security omits to do so, but at the same time enters into the management of the estate, will not in any way affect his accountability to the Court with regard to amounts received by him.<sup>69</sup> The only difference between a receiver who has given security and one who has not given security consists simply in the nature of the receiver's liability for moneys due from him. In the one case it will be a secured debt, and in the other case it will be a simple money debt.<sup>70</sup>

If it should become necessary to enforce the receiver's or surety's bond it is assigned by the Court to the party entitled to sue upon it; should the suit be still undetermined at that time the Court would probably appoint a new receiver with power to sue upon the bond assigned to him.<sup>71</sup>

A surety of a receiver is liable to the extent of the amount secured by his recognizance, for the payment not only of the principal, but also of interest on balances improperly retained by the receiver, as also for the costs of proceedings in Court necessarily or properly incurred in consequence of the receiver's default.<sup>72</sup>

(68) *Harris v. Sleep* (1897), 2 Ch. 80. See also chapter on "Receiver's Accounts," where this point is dealt with more fully.

(69) *Smart v. Flood & Co.*, (1883) 49 L.T. 467.

(70) See *Reward Simmons v. Rose*, (1862) 31 Beav. 1.

(71) Woodroffe on Receivers, 2nd Ed., 1910, p. 68.

(72) *Rashmani Dasi v. Baroda Kant Sarkar*, 20 C.L.J. 123=28 Ind. Cas. 31.

## CHAPTER XI.

### RECEIVER'S POSSESSION.

Duty of receiver to get possession of property over which he is appointed.

Nature of receiver's possession in general.

Possession of receiver sometimes regarded as possession of parties to the suit—Nature of receiver's possession examined.

Receiver's possession not adverse to any party to the suit.

Receiver's right to possession cannot be increased or curtailed by agreement with the parties.

Receiver's title to the property.

Receiver's title and right to possession relate back to time of appointment.

Receiver's possession does not destroy existing liens and charges. Court would aid receiver in obtaining possession,—

(i) From the party to the suit.

(ii) From the agents of the parties and others claiming under them.

(iii) From third parties.

Power of Court appointing a receiver to remove stranger from possession.

Receiver cannot recover from third parties whose rights date prior to his appointment.

Right of appeal by the dispossessed third party.

Refusal to hand over property to receiver—Procedure.

Stranger claiming right to possession must apply to the Court—Practice.

Possession as between different receivers.

Possession of the property when the person appointed receiver declines to act.

Change of possession from one receiver to another.

Final decree in suit declaring one of the parties entitled to possession—Receiver bound to give up possession to such party.

Receiver's lien and possession may continue until his remuneration is paid.

WE have already seen that the main object of appointing a receiver was the protection and preservation of the property which is the subject of the suit. Consequently it is necessary that the receiver should have as much possession of the property as its nature and condition may admit of, or as the circumstances of the case may necessitate. Thus we find that the usual order appointing a receiver directs that he shall receive the rents and profits, and the tenants on such property are also directed to attorn and pay their rents and arrears and growing rents to the receiver. <sup>1</sup>

(1) See Rules of the Supreme Court of England, 1883, App. K, Forms Nos. 26 H. and 26J.



The appointment of a receiver is, as we have already seen, the act of the Court and one made in the interests of justice or *ex debito justitiæ*. He is an officer or representative of the Court, and subject to its orders. His possession is the possession of the Court by its receiver, and the tenants in possession, when he is appointed to receive rents and profits of immoveable property, become virtually tenants *pro hac vice* of the Court, their landlord. His possession is the possession of all the parties to the proceeding according to their titles. The moneys in his hands are in *custodia legis* for the person who can make a title to them.<sup>2</sup>

"The receiver appointed in a particular suit is nothing more than the hand of the Court, so to speak, for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite*; and the possession of the receiver is simply the possession of the Court. To such an extent is this the case, that any attempt to disturb that possession, without the leave of the Court, is a contempt of Court. The receiver has no personal rights in the property, and he cannot take any steps, even for the purpose of defending his possession, without the sanction of the Court. Also, as a rule, so little personal interest of any kind has he in the matter, that he is not justified himself in making any application whatever to the Court. If it is necessary that he should take action, of any sort, it is for the parties to the suit, or one of them, to come to the Court to put him in motion; and whatever the receiver rightly does, with regard to the property, it is

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(2) *Orr v. Muthia Chetti*, 17 M. 501 (503). Moneys in the hands of the receiver belong to the Court which appointed him, and are in *custodia legis*, and he cannot spend them except under the orders of the Court. If they are lost, whilst in custody of the receiver notwithstanding the exercise by him of due care, it cannot be denied that the loss must devolve on the estate, for the loss is not imputable to his default or that of any other. *Orr v. Muthia Chetti*, 17 M. 501 (504). The receiver of a Court of equity being regarded as its executive officer, in much the same light in which a sheriff is the executive officer of a court of law, the property in his possession is regarded as in the custody of the law, to the same extent as if levied upon under an execution or attachment. Blodgett, J., in *In re Merchants Insurance Co.*, 3 Biss. 165. But money in the hands of a receiver is not in *custodia legis* in the same way as it is when in the hands of a sequestrator. *Hoare, In re, Hoare v. Owen*, 61 L.J., Ch. 541; (1892) 3 Ch. 94; 67 L.T. 45; 41 W.R. 105 (Eng.). A receiver who holds and administers the estate is merely the officer of the Court, and the estate must, for all legal purposes, be regarded as being in *manibus curiæ*. *In re Prem Lall Mullick*, 22 C. 1011 (1015), P.C. = 22 I.A. 203 = 5 M.L.J. 157 = 6 Sar. P.C.J. 660. An insolvent's property vested in the Official Assignee is not in *custodia legis* as property in the hands of a receiver is and there is no contempt of the authority of the Court in instituting a suit against the Official Assignee with respect to property vested in him and in his possession. *Ramalinga Chetti v. P. B. Anantachariar*, 24 M.L.J. 350.

clear that he does it simply in the character of agent for the owners of the property, or the persons interested in it, and, with one exception in no sense as principal."<sup>3</sup>

The appointing a receiver is not in all cases a turning the party out of possession. Thus, where a receiver is appointed of an infant's estate the receiver's possession is the possession of the infant; but on the appointing a receiver in an adversary's suit, as where the plaintiff in ejectment has recovered a verdict, here the receiver's possession seems to be the possession of him that has a right to it.<sup>4</sup>

The rule in the original side of the Court, taken from the practice of the English Court of Chancery, is not to compel a party to a suit to give up to the receiver possession of property, unless an order of Court to that effect had previously been made upon him, the proper course being by proceedings in Court to fix an occupation-rent, and to order the party in possession to pay the same.<sup>5</sup>

In some cases it has been laid down that the possession of the Court by its receiver is the possession of all parties to the suit according to their titles, that the appointment of a receiver is not for the benefit of the plaintiff merely, but for all other persons who may establish rights in the cause. In the same case the qualification is also added that the receiver is not the particular agent for any party, but that he is the officer of the Court.<sup>6</sup>

Possession of receiver sometimes regarded as possession of parties to the suit—Nature of receiver's possession examined.

(3) Per Phear, J., in *Wilkinson v. Gangadhar Sirkar*, 5 B.L.R. 486 at pp. 487, 488.

(4) *Sharp v. Carter*, 3 P. Wms. 379. It is well-settled under the English law that a receiver of lands does not take actual possession, but he only receives the rents, and he does so not by virtue of the estate vested in him, but merely as an officer of the Court authorised to collect the rents upon the title of persons who are parties to the action. *Ex parte Evans*, (1879) 13 Ch. D. 252; *Vine v. Raleigh*, (1883), 24 Ch. D. 238 (243). So also the possession by the receiver, though it necessarily displaces the possession of the owner or occupier to some extent for the purposes of the appointment (*Sharp v. Carter*, 1735, 3 P. Wms. 375, 379), does not interfere with the rights and liabilities of the parties to the action in relation to strangers. (*Re Butler's Estate*, 1863, 13 I. Ch. R. 453; *Moir v. Blacker*, 1890 26 L.R. Ir. 375, C.A.) It is not such an interruption of possession as prevents the Statutes of Limitation running in favour of the defendant as against strangers to the action (*Anon.*, 1738, 2 Atk. 15, Per Lord Hardwicke, L.C.), though it does prevent their running in favour of strangers as against the party obtaining the appointment. *Wrixon v. Vize*, (1842) 3 Dr. and War. 104. A receiver is not a necessary party to a suit for possession of immoveable property in his possession. *Kumar Sattya v. Rani Golap Moni*, 5 C.W.N. 27. It is not necessary to sue the receiver as such; but when any right is established by a decree in the suit to the property in the hands of a receiver, then the Court may, on application by the party in whose favour the right is established make an order directing the receiver to satisfy the decree, *Advocate-General of Madras v. Dasai Goundan*, 9 M.L.T. 300.

(5) *Ram Lochun Sircar v. Mr. C. S. Hogg*, 10 W.R. 430.

(6) *Sarala Sundari Dasi v. Sarada Prosad Sur*, 2 C.L.J. 602. The possession of a receiver appointed by the Court during the pendency of a suit should be regarded as possession for the party who might ultimately turn out to be the true owner and entitled to

In other cases, it is declared that the possession of a receiver is that of the person ultimately found to be rightly entitled. The receiver is a trustee<sup>7</sup> and "when the party is ascertained the receiver will be considered as his receiver."<sup>8</sup>

The Allahabad High Court has similarly laid down that where a receiver is appointed over an estate and is in possession of the same, his

possession as such. The effect of such possession by the receiver is to destroy the adverse possession, if any, of either of the parties. *Sarala Sundari Dasi v. Sarada Prosad Sur*, 2 C.L.J. 602 (603). (*Kartie v. Padmanund*, 11 C. 496, *Orr v. Muthia Chetti*, 17 M. 501 and *Tribhuwan v. Sri Narain*, 20 A. 341 applied). See also Note (18) *infra*. A receiver of mortgaged property appointed by the Court on the adverse application of the mortgagee may be treated as the agent of the mortgagor for the purpose of this section. *Annappagauda v. Sangadigayya*, 26 B. 221=3 Bom. L.R. 817, (F.B.); *Chinnery v. Evans*, 11 B.L.C. 115. A receiver is a 'landholder' as defined in S. (3) 5 of the Madras Estates Land Act. To be a landholder under that section it is not necessary that a person must also be a beneficial owner of the estate. *Gopisetti Narayanaswami Nayudu Garu v. Nalam Subrahmanyam*, 2 L.W. 683=18 M.L.T. 148=1915 M.W.N. 590. A receiver has the same powers of management as an owner and he can let a tenant into possession of cultivable lands. *Gopisetti Narayanaswami Nayudu Garu v. Nalam Subrahmanyam*, 2 L.W. 683=18 M.L.T. 148=1915 M.W.N. 590. A receiver is not the "owner" of the premises he holds as receiver within the definition of the term as contained in the Municipal Act. *W. R. Fink v. Calcutta Municipal Corporation*, 30 C. 721=7 C.W.N. 706; if he receives rent for such premises, he does not do so on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, but as an officer of the Court and as manager of the property on its behalf. (*Ibid.*) A receiver cannot be made a party to any suit or proceedings without the leave of the Court appointing him. *W. R. Fink v. Calcutta Municipal Corporation*, 7 C.W.N. 706=30 C. 721. As pointed out in *Kerr on Receivers*, 4th Ed., p. 149, "the effect of the appointment of a receiver is to remove the parties to the action from the possession of the property. If at the time a receiver is appointed a party, claiming a right in the same subject-matter under a title paramount to that under which the receiver is appointed, is in possession of the right which he claims, the appointment of the receiver leaves him in possession. But parties to the action who are not in possession under a paramount title are removed from possession by the appointment of a receiver." Similarly at page 153 the learned author observes that "the possession of the Court by its receiver is the possession of all parties to the suit according to their titles. The appointment of a receiver is not for the benefit of the plaintiff merely but for all other persons who may establish rights in the cause. The receiver is not the particular agent of any party, he is the officer of the Court." Reliance was placed on behalf of the appellant upon a passage in page 152 in which it is stated that "the appointment of a receiver will not prevent the operation of the statute of limitations against the rightful owner out of possession not being a party to the suit or interrupt the possession of a stranger so as to prevent the statute of limitations conferring a title on him. This really does not help the appellant in as much as Hari Das was a party to the suit in which Mr. Belchambers was appointed receiver. The consequence was that since Mr. Belchamber's appointment as receiver, he held possession for the party who might ultimately turn out to be the true owner. Accordingly, it must be held that Hari Das did not get possession of this property and was in the eye of the law not in possession till he was restored to possession on the 15th August 1896 by Mr. Belchambers." Per Geidt and Mookerjee, JJ. in *Sarala Sundari Dasi v. Sarada Prosad Sur*, 2 C.L.J. 602 at pp. 610, 611.

(7) *Seagram v. Tuck*, L. R. 18 Ch. D. 296.

(8) *Kerr on Receivers*, p. 137, cited in argument in *Appasami Naickan v. Jotha Naickan*, 22 M. 448 (451).

possession would be deemed to be the possession of the person who has the right title to the property.<sup>9</sup>

The Calcutta High Court has also laid down on more occasions than one that "Whatever the receiver rightly does with regard to the property under his control he does in the character of agent for the owners of the property. This principle applies just as much with regard to parties to the suit who opposed his appointment or who objected to his receiving particular powers, as it does to the parties or at whose instance he is appointed or set in motion. This being so, the ordinary law of principal and agent applies, and the parties must be held liable for the acts of their agent."<sup>10</sup>

In one case, the Judicial Committee said that, in the absence of anything to the contrary, the receiver had no greater power or authority than the plaintiffs themselves would have.<sup>11</sup>

In the face of these several dicta the question arises, when and to what extent is the receiver's possession regarded as the possession of one or other of the parties to the suit. The question does not seem to have arisen in any of the reported judgments of our High Courts, although there are here and there some not very definite expressions of opinion. Mr. Alderson in his work on Receivers has offered an intelligent solution, which, it is submitted, may well be adopted by our Courts, being in accordance with justice and equity. The learned writer says,—“It is sometimes stated that the possession of a receiver is that of the party who is ultimately successful in the litigation, and that his title will relate back to the appointment.<sup>11-a</sup> But that this is not sound as a general principle is clear when the nature of the actions in which receivers are appointed are considered; these are, in general, of two kinds; the one to establish a title to certain property, as in a mortgage foreclosure, partition suits and the like; the other to establish a debt or other claim, or for a dissolution of a corporation or partnership, and to leave the property of the debtor, partnership or corporation collected, reduced to available assets and distributed. In the first class the proposition is substantially correct, in the second it is not at all true. Thus Lord

(9) *Tribhuwan Sundar Kuar v. Sri Narain Singh*, 20 A. 341 (344)=18 A.W.N. (1898), 65.

(10) *Wilkinson v. Gungadur Sircar*, 6 B.L.R. 486, cited with approval in *Poreshnath Mookerjee v. Omerto Nauth Mitter*, 17 C. 614 (616).

(11) *Ram Chandra Marwari v. Keshobati Kumari*, 36 C. 840=10 C.L.J. 1=6 A.L.J. 617=6 M.L.T. 1=11 Bom. L. R. 765=13 C.W.N. 1102=19 M.L.J. 419=36 I.A. 85 (P.C.)

(11-a) *Beverley v. Brooke*, 4 Gratt. 187, 212; *Sharp v. Carter*, 3 P. Wms. 375; *Ellcott v. Warford*, 4 Md. 80.

Hargreave, in the case of *In re Butler's Estate*, <sup>11-b</sup> said: "The general proposition is, that the possession of the receiver is that of all parties to the suit, according to their titles. As between the owner and incumbrancers, it is for some purposes the possession of the incumbrancers, who have obtained or extended the receiver; as between the owner whose possession has been displaced and a third party, it is the possession of the former. The receiver is in fact his agent; all the rents are applied to his use, either by paying his debts or paramount charges, or by being handed over to him."<sup>12</sup>

The possession of the receiver is not adverse to any party to the suit. In fact, it has been held that the true effect of the possession of the receiver is to destroy the adverse possession, if any, of either of the parties.<sup>13</sup>

The appointment of a receiver over property which is the subject of a lease is not the same thing as the concealment of a lease, or the ejectment of a leaseholder. The possession of the receiver is not adverse to

(11-b) *In re Butler's Estate*, 13 Ir. Ch. (N.S.) 456.

(12) See Alderson on Receivers, 1905, S. 198, pp. 241, 242. "Mr. High in his work on Receivers says: 'It is sometimes asserted as a general principle in the reported cases, that a receiver being appointed primarily for the benefit of all parties in interest, his possession will be treated as the possession of the party who is ultimately determined to be entitled thereto, and that when the question of right is finally determined, the possession of the party prevailing becomes exclusive throughout the whole period, by relation to the date of the receiver's appointment. (See *Beverley v. Brooke*, 4 Grat. 212). While this principle is true to a limited extent, as that if any benefit is to ensue to the successful party from the mere act of possession, he will be regarded as having been in possession from the first, and none of his rights will be lost because of the receiver's possession, the principle will not be carried to the extent of prejudicing his rights. And when possession of the property in dispute has been taken from defendant by injunction, and the property has been placed in the hands of a receiver, the injunction rendering the appointment of a receiver indispensable for the protection of all parties, if defendant is finally adjudged to be entitled to possession and the injunction is dissolved, the receiver's possession during the interval will not be treated as that of defendant, so as to prevent him from claiming and recovering damages because of the injunction.' (*Sturgis v. Knapp*, 33 Vt. 486). But when plaintiff in a suit to recover possession of real estate obtains a receiver as against defendant, and obtains a verdict in his favour in an action of ejectment to try the title, and the receiver is then ordered to surrender possession to the plaintiff, the receiver's possession will not be deemed that of the defendant, but rather of the plaintiff, who appears to be entitled to the premises. (*Sharp v. Carter*, 3 P. W. 375). And when a receiver of mortgaged premises has been directed to pay the balance in his hands to a mortgagee, and to pass his accounts preliminary to his final discharge, but remains in possession after such order, paying the rents to the mortgagee, his possession after the date of the order will be regarded as that of the mortgagee himself (*Horlock v. Smith*, 11 L.J., N.S. Ch., 157). But it would seem that the appointment of a receiver does not so alter possession of the estate in the person who is ultimately found to have been entitled thereto at the time of such appointment as to prevent the statute of limitations from running during the dispute as to the right. (*Anonymous*, 2 Atk 15).

(13) *Sarala Sundari Dasi v. Sarada Prosad Sur*, 2 C.L.J. 602. (11 C. 496, 17 M. 501; 20 A. 341, *Appl.*).



the leaseholder, and could not be pleaded against him in any question of limitation. The possession of the receiver is for the benefit of the parties to the suit.<sup>14</sup>

A receiver appointed by the Court has only just such power and authority to manage the property committed to his charge as the Court may choose to give him. He is a servant of the Court and not of the parties to the suit, and any interference with his management by a secret agreement with the parties, whether come to before or after the appointment, is nothing short of an interference with the Court in the management of the estate. The party so interfering renders himself liable to the penalties of contempt.<sup>15</sup>

Such an agreement neither enlarges the receiver's rights, nor can they in any way curtail them. They remain just as the Court chooses to confer—neither rendered more nor less.<sup>16</sup>

From what has already been stated, it would be clear that the receiver has no personal interest in the property<sup>17</sup>, and that consequently he cannot have any right, title or interest to it in his own right or on his own account.<sup>18</sup> But for several purposes he is deemed to be the agent of the party who is ultimately found to be entitled to possession; <sup>19</sup> and in a recent case

(14) Per Tottenham and Ghose, JJ., in *Karticknath Pandey v. Padmanund Singh*, 11 C. 496 (498).

(15) *Manick Lall Seal v. Surrut Coomaree Dassee*, 22 C 648 (656). See also *Prokash Chandra v. Adlam*, 30 C 696.

(16) (*Ibid.*).

(17) Per Phear, J, in *Wilkinson v. Gangadhar Sirkar*, 6 B L R. 486 (487).

(18) A receiver has no estate or interest in the property himself. His right to possession and management is created simply by the order of the Court appointing him, and is binding only upon the persons before the Court, *Nilmadhub v. Gillanders*, 2 Sev. 951 (1863). A receiver of the rents of house property is not the "owner" within the meaning of the Public Health Act, (1875) 38 and 39 Vic., c. 55. S 4), for he does not receive the rents either on his own account or as agent or trustee for any other person (*Bacup Corporation v. Smith*, 1890, 44 Ch. D. 395.); nor is he the "owner" within the meaning of the Water Companies (Regulation of Powers) Act, 1887, §50 and 51, Vic Charter 21; See *Metropolitan Water Board v. Brookes*, [1910] 2 K.B. 134. See also note (6), *supra*

(19) See Chap. I, *supra* and also notes 6—12 *supra* in this Chapter. Though a receiver appointed by the Court is not an agent and cannot, therefore, give an acknowledgment of the existence of a debt on behalf of any principal (*Whitley v. Lowe*, 1858, 25 Beav. 421; *affirmed* 2 De G. and J. 704, C.A.), yet payment of interest by a receiver appointed at the instance of a mortgagee is clearly payment on behalf of the mortgagor and as such sufficient to prevent the operation of the Statutes of Limitation. *Chinnery v. Evans*, (1864) 11 H.L. Cas. 115. But see also *Annapagauda v. Sangandyapa*, 3 Bom. L.R. 817=26 B 221; *Baij Nath Ram v. Hem Chunder Bose*, 10 C.W.N. 959, noted under Chap. VIII, notes 84 to 90.

it has also been said that " when the rightful party is ascertained, the receiver will be considered as his receiver."<sup>20</sup>

In another case the Court said that the receiver can exercise " such powers and rights over the property as the parties to the suit turn out to be possessed of when their rights are finally determined."<sup>21</sup>

The necessity to give the receiver some sort of title, at least, in a representative capacity, for a limited period and for limited purposes, is obvious. The party in possession is made to give up his possession by the order of appointment ; who the rightful owner is could not be stated in several cases, as that may be one of the issues pending decision in the suit. Consequently the law must find some one in whom at least so much of title should be deemed to be vested as would be sufficient to entitle him to take such measures and do such acts as would be necessary for the due preservation and management of the property. Hence, it has been declared, that when property which is the subject of litigation has been stolen away, the ownership of such property may be averred in the receiver, in proceedings for the prosecution of the thief for theft.<sup>22</sup>

The title of the receiver whatever it be and his right to possession arise from the moment of his appointment. The fact that the proceedings were not perfected until a later date will not affect the receiver's title or right to possession. The receiver's possession being the possession of the Court, the order of appointment of receiver is in effect a declaration by the Court that it has taken upon itself the care and control of the property through its own officer. And the fact that the receiver delays in taking actual possession, or that he does not take possession at all, or declines to act, does not affect the custody of the law.<sup>23</sup>

Hence it has been held that the receiver's title and right of possession during the interval between the order of appointment and the time of perfecting his appointment by giving the necessary bond and security are superior to those of judgment-creditors, or of attaching creditors, who take out execution of their decrees upon the property during such interval.<sup>24</sup>

(20) See *Appasami Naicken v. Jotha Naicken*, 22 M. 448 (431).

(21) *In the matter of Messrs. John Tiel & Co. v. Abdool Hyè*, 19 W. R. 37.

(22) *State v. Rivers*, 60 Iowa. 381.

(23) *Skinner v. Maxwell*, 68 N. C. 400. See *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=1 Ind. Cas. 356=36 C. 713.

(24) *Rutter v. Tallis*, 5 Sandf. 610.

The appointment of a receiver does not take effect or date back by relation to a period prior to his appointment.<sup>25</sup>

At least as regards the rights of third persons, the appointment of a receiver does not take effect or date back by relation to a period prior to his appointment.<sup>26</sup>

The appointment of a receiver is complete on the entry of an order of appointment, although he may not be able to take actual possession of the property until the security is approved.<sup>27</sup>

The possession of a receiver in no way affects any valid charges or liens that exist over the property, at the time of his appointment. All charges and liens acquired *bona fide* by third parties prior to the date of his appointment are protected.<sup>28</sup>

**Receiver's possession does not destroy existing liens and charges.**

**Court would aid receiver in obtaining possession (i) From the party to the suit.**

The receiver being the officer of the Court, he is entitled to the aid of the Court in getting possession of the property for the preservation and management of which he was appointed.

This order the Court is entitled to make on all the parties to the suit. They being parties on the record the order appointing the receiver would bind them, and they would not be entitled to object to delivering the possession to the receiver.<sup>29</sup>

When in a suit for partition the District Judge appointed a Receiver for the property in dispute and the defendants while their case was under appeal realized certain sums which the Receiver might have

(25) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(26) Per Mookerjee and Carnduff, JJ., in *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654 (660)=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(27) *Rowland Hudson v. John Pierpont*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(28) See *Gere v. Dibble*, 17 How. Pr. 31. Thus when a creditor has obtained a decree against his debtor prior to the appointment of the receiver of the debtor's estate, and if the decree also gives a charge over such estate, the receiver's possession of the estate can only be subject to the charge of the judgment-creditor. *Gere v. Dibble*, 17 How. Pr. 31; *In re North American Gutta Percha Co.*, 17 How., Pr. 549. "Where property on which there are valid liens existing at the time of his appointment, has come into possession of the receiver, the receiver must clearly hold the same subject to such liens, and his appointment cannot divest the lien previously acquired in good faith, a view which has also been taken by the Supreme Court of the United States." (*Quincey v. Humphreys*, 145 U.S. 82; *High on Receivers*, S. 138; *Beach on Receivers*, S. 202, cited by Mookerjee and Carnduff, JJ. in *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654 (660)=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356). The possessory lien of an agent is subject to all the rights and equities available against the principal at the time such lien attaches. *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(29) *In re Cohen*, 5 Cal. 494, (American Case).

realized and the District Judge directed them to pay in at once the sums realized by them to the receiver or into the Court—*Held*, that the property vested in the receiver directly the order appointing him had been passed, and no one had the right to assume his functions without reference to the Court, and the order passed by the District Judge was proper and within his powers.<sup>30</sup>

(ii) From the agents of the parties and others claiming under them.

Similarly the Court may assist the receiver to get possession from the agents, servants and other persons claiming their rights under the parties. For whatever binds parties also binds persons that claim under them.<sup>31</sup>

The question whether the Court has power to remove third parties from possession is not capable of such easy solution. (iii) From third parties. It may however be stated that the Court has jurisdiction, though it will exercise its rights with reluctance and only in extreme cases.<sup>32</sup>

The mere assertion by a stranger in possession of a paramount title against the receiver does not compel the Court to withhold its hands. The title must be proved.<sup>33</sup>

The Court has a discretion which it will exercise judicially in determining whether or not it will direct the removal of a stranger in a receivership proceeding.<sup>34</sup>

The test which the Court will apply in such a case is whether the parties to the suit or some or one of them have or has a present right to remove the stranger.<sup>35</sup>

The following passages from the judgment of Mookerjee, J., contain a fine exposition of the law on this subject:—"The first point taken on behalf of the appellant raises the question, whether the Court has jurisdiction to remove from possession a person who claims under a title paramount to that of the parties to the litigation in which the receiver is appointed. On behalf of the appellant, it is argued broadly that the Court has no jurisdiction to do so, and that as soon as a

Power of Court appointing a receiver to remove stranger from possession.

(30) *Pala Mal v. Tek Chand*, 61 P.L.R. 1902.

(31) *In re Cohen*, 5 Cal. 494 (American case).

(32) *Cassilear v. Simmons*, 8 Paige, 273.

(33) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(34) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.

(35) *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356.



receiver finds that the subject-matter of the litigation is in the possession of the persons who claim under a paramount title, he as well as the Court from which he derives authority, must withhold their hands. In our opinion, this contention is not supported either by principle or by authorities. Section 503 of the Code of Civil Procedure clearly contemplates the removal from possession of persons who are not parties to the suit, and the last paragraph of the section formulates the test to be applied in cases of this description. In determining whether the Court should remove from possession or custody of property under attachment, any person who is not a party to the litigation, the test to be applied is whether the parties to the suit or some or one of them have or has a present right so to remove him. If the intention of the legislature had been that a person who was not a party to the suit should not, under any circumstances, be deprived of possession of the disputed properties, the Code would have made an appropriate provision to that effect. On the other hand, the Code expressly provides for the test to be applied in cases of controversy between the receiver and a stranger to the suit. It is argued, however, by the learned counsel for the appellant that as soon as the stranger asserts a paramount title, the Court must stay its hands. In our opinion, this argument is opposed to reason and principle. If this were the true rule of law, the action of the Court might be paralysed by the groundless assertion of an entirely unfounded claim. But as was pointed out by this Court in the case of *Budh Singh Dudhuria v. Niradbaran Roy* <sup>36</sup> it is an elementary principle that when the jurisdiction of a Court to take cognisance of a matter brought before it, is disputed, the Court must adjudicate upon the question. The jurisdiction of the Court is ousted, not by the mere assertion of the existence of the circumstances under which the Court loses its jurisdiction, but upon proof of their actual existence.<sup>37</sup>

This view is also supported by the observations of Mr. Justice Pigot in *Mahomed Medhi v. Joharra* <sup>38</sup> where the learned Judge pointed out that when a person who is a stranger to the suit seeks to retain possession as against the receiver appointed at the instance of the parties to the litigation, it is proper for, and perhaps absolutely incumbent on, the Court to make an order for an enquiry, because whatever may be

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(36) 2 C.L.J. 431 at p. 437.

(37) As illustrations of the application of this doctrine, it is sufficient to refer to the cases of *Hurree Persad v. Koonjo Behary*, Marshall's H.C. Rep. 99 (1862); *Chunder Koomar v. Bakur Ali*, 9 W.R. 598; *Sashti v. Tarak*, 8 B.L.R. 315, *Mahomad Wahiduddin v. Hakimam*, 25 C. 757, and to the observations of Mr. Justice Willes in *Mayor, etc., of London v. Cox*, L.R., 2 H.L. 239 at pp. 261, 263 (1867).

(38) 17 C. 285.



the least expensive course, consistent with satisfactory enquiry, ought to be adopted in order that the Court shall not by its dominant power hold the property on which the parties to the suit have no claim and hold it in despite of the real owners; if the Court can find out who the real owners are, it should do so and in the least expensive manner. No doubt, when the question arises whether the Court should remove from possession a person who is a stranger to the suit, the Court has a discretion which must be exercised judicially and not arbitrarily. But the view that the mere assertion of a paramount title compels the Court to withhold its hands cannot be supported. Substantially the same principle has been adopted in the English and American Courts. Thus, it has been ruled in England that although the effect of the appointment of a receiver is to remove the parties to the action from the possession of the property, if at the time when a receiver is appointed, a party claiming a right in the subject-matter under a title paramount to that under which the receiver is appointed is in possession of the right which he claims, the appointment of the receiver leaves him in possession.<sup>39</sup>

In the American Courts, also, when a receiver comes into conflict with third persons, such third persons are, it appears, permitted to come in and be heard in relation to their interests or they are given leave to bring a suit against the receiver to test the question of their rights.

In other words, as observed in Alderson on "Receivers,"<sup>40</sup> "the Court will in general entertain such an application on affidavits only where it clearly appears that the adverse possession began subsequent to the commencement of the action and is therefore subject to the decree or order which has been made or where the person holding the property has no legal right; but as a rule, wherever the testimony is conflicting, and there is a reasonable ground for difference of opinion as to which is entitled to possession of the property, the Court will not assume to try the title by hearing a motion for a "writ of assistance."<sup>41</sup> It is obvious therefore that the Court must determine whether the receiver is entitled to possession as against the stranger by the application of the test whether or not the parties to the suit or some or one of them have or has a present right so to remove him."<sup>42</sup>

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(39) *Evelyn v. Lewis*, 3 Hare 472; *Bryant v. Bull*, 10 Ch. Div. 153; *Wells v. Kilpin*, L.R. 18 Eq., 298; *Underhay v. Read*, 20 Q.B.D. 209.

(40) S. 193.

(41) *Musgrove v. Gray*, 123 Alabama, 363; 82 Amer. St. R. 124; *Galheka v. Milivanke*, 11 Mis. 454; *Vincent v. Parker*, 7 Paige, N.T. 65.

(42) Per Mookerjee and Carnduff, JJ., in *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654 at pp. 657, 658, 659=9 C.L.J. 563=36 C. 713=1 Ind. Cas. 356. In a recent English case an order was made, appointing a receiver to receive the interest of a sum of

Receiver cannot recover from third parties whose rights date prior to his appointment

It has been held in a recent case by the Madras High Court that a receiver appointed under S. 503 of the Code of Civil Procedure, in respect of any moveable or immoveable property, though he is entitled to take possession of it from the parties to the suit, to manage it etc., cannot be held to be entitled to recover possession from a third party, stranger to the suit whose rights date prior to his appointment.<sup>43</sup>

Such a receiver has no right to recover property sold before his appointment by the judgment-debtor on the ground that the sale is voidable as against the creditors on the principle embodied in S. 53 of the Transfer of Property Act.<sup>44</sup>

The following observations of Benson and Sundara Ayyar, JJ., may also be noted:—Under S. 503 of the old Civil Procedure Code (1882) <sup>45</sup> when a person is appointed receiver of any moveable or immoveable property, he is entitled to take possession of it from the parties to the suit, to manage it, to realise its incomes and to continue in custody of it until discharged by the Court. The title to the property does not vest in him. <sup>46</sup> His rights arise only on the date of his appointment and not before. <sup>47</sup> He is not entitled to recover possession from a third party, stranger to the suit, whose rights date prior to his appointment. Nor does his appointment affect any rights previously acquired by third persons.<sup>48</sup> In *High on Receivers*, the author states (S. 359), “As regards the title acquired by a receiver of a National Bank thus appointed, the rule is that he holds such estate and title as the bank itself had in its assets, his title being similar in this respect to that of an assignee in

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money in the hands of trustees, and ordering the trustees to pay a specific amount out of the interest to the receiver half-yearly until the judgment in the action should be satisfied. The trustees were trustees of a will, by which they were directed to set apart and invest the sum in question, and were authorised, at their absolute discretion, from time to time, and at such time or times as they should think proper, to pay or apply the whole or any part of the income to or for the benefit of the judgment-debtor in such a manner in all respects as they should think proper. The trustees applied for a prohibition:—*Held*, that as it depended on the discretion of the trustees whether anything should be paid to the judgment-debtor, the receiver could not be entitled to receive the interest in their hands, and that an order for payment could not be made against the trustees, who were strangers to the action. *Reg. v. Lincolnshire County Court Judge*, 57 L.J., Q.B. 136; 20 Q.B.D. 167; 58 L.T. 54; 37 W.R. 174.

(43) *Mahamed Karim Sahib v. Panchapakesa Chetti*, 35 M. 578=17 Ind. Cas. 233.

(44) *Mahamed Kasim Sahib v. Panchapakesa Chetti*, 35 M. 578=17 Ind. Cas. 233.

(45) O. XL, r. 1 of the Code of Civil Procedure (Act V of 1908).

(46) See *Ram Lochun Sircar v. Hogg*, 10 W.R. 430.

(47) See *Defries v. Greed*, (1865) 34 L.J. Ch. 607; *Edwards v. Edwards*, (1876) 2 Ch. D. 291.

(48) See *Alderson on Receivers*, S. 169; *High on Receivers*, S. 359.

bankruptcy. He is not a third person in the sense of commercial transactions, and cannot void a pledge of estates of the bank which could not be avoided by the corporation itself. When, therefore, the bank has deposited notes constituting a part of its assets with a creditor as security for advances, the bank itself being concluded by the deposit or pledge, the receiver is not entitled to such notes, and cannot maintain an action therefor until the creditor or pledgee is made good for his advances." No authority has been cited to us, nor are we aware of any in support of the position that a receiver appointed in the circumstances of this case has any right to recover property which has been already sold away by the judgment-debtor on the ground that the sale is voidable as against the creditors on the principle embodied in S. 53 of the Transfer of Property Act. Counsel for appellant relied on a passage in High on Receivers<sup>49</sup> where it is laid down that a receiver in proceedings supplementary to execution in some of the States of America may institute actions in his own name to set aside fraudulent assignments or transfers made by a debtor with the view of defeating his creditors, and may recover the property so transferred for the purpose of applying it in satisfaction of the judgments, but the passage has reference to receivers not of particular property attached by the Court but over all the property and effects of a judgment-debtor and as laid down in Alderson on Receivers, S. 508. The object of the appointment in such cases is to discover all property which belongs to the judgment-debtor for the benefit of his creditors, and the receiver's right extends not only to all property and rights of property of the debtor, but to property which he has disposed of in fraud of his creditors. In England also, receivers of the debtor's estate could, formerly at least, be appointed for the benefit of his creditors. "Lord Eldon declared that it was in his day the ancient rule where a judgment-creditor found upon the issue of his execution that the debtor's estate was protected in such a way by circumstances respecting a prior title that the judgment could not be enforced, he might apply for a receiver and that the fact that the creditor could not at law obtain satisfaction of his judgment was sufficient to entitle him to a receiver of his debtor's estate." But there is apparently no provision in the Indian law for the appointment of such a receiver. "We are of opinion therefore that the receiver in this case had no power to maintain the suit against the defendant for the value of the goods sold to him on the ground that his sale was not binding on the creditors of the judgment-debtor." 50

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(49) Para 454.

(50) Per Benson and Sundara Ayyar, JJ., in *Mahamed Kasim Sahib v. Panchapakesa Chetti*, 35 M. 578 at pp. 580, 581=17 Ind. Cas. 233.

"We may also note that the plaint does not state, nor does it otherwise appear that the receiver obtained the permission of the Court to institute this suit. The ordinary rule is that the permission of the Court is necessary to entitle the receiver to institute suits.<sup>51</sup>"

An order authorising a receiver appointed by the Court to remove any person in possession of the property is appealable under S. 588, (cl. 24) of the Civil Procedure Code (Act XIV of 1882)<sup>52</sup> at the instance of the person sought to be dispossessed.<sup>53</sup>

Right of appeal  
by the dispossessed  
third party.

In the course of the judgment their Lordships Mookerjee and Carnduff, JJ., said:—

"As regards the preliminary objection taken on behalf of the respondents, we are of opinion that there is no substance in it. The order of the Subordinate Judge under which the receiver is authorized to remove Hudson and to take possession of the properties now in his custody, was undoubtedly made under S. 503, cl. (b) of the Code of 1882. That order is, consequently, appealable under S. 588, cl. (24). It was not necessary for the appellant to challenge the order by which the receiver was appointed. He was no party to that order, nor does it appear that he had any notice of it. He was not affected by the proceedings for the appointment of a receiver, till the latter made an attempt to deprive him of possession of the disputed properties. As soon as there was an adjudication between him and the receiver as to the title of the latter to remove him from possession, he became entitled to question the validity of the adverse order. We must consequently overrule the preliminary objection and consider the case on the merits.<sup>54</sup>"

Where a receiver has been appointed and any person refuses to hand over property to him, the proper course is for the Court to hold an inquiry as to the possession of the property in question, and as to whether it is property that should be handed over to the receiver before issuing an injunction under the provisions of the Code of Civil Procedure, unless it appears that the object of the injunction would be defeated by the delay.<sup>55</sup>

Refusal to hand  
over property to  
receiver— Procedure.

(51) See Woodroffe on Receivers, pp. 241, 242, Kerr on Receivers, p. 202 and High on Receivers, S. 208 cited by Benson and Sundara Iyer, JJ., in *Mahamed Kasim Sahib v. Panchapakesa Chetti*, 35 M. 578 at p. 581=17 Ind. Cas. 233.

(52) Civ. Pro. Code, 1908, O. XLIII, r. 1, Cl. (s).

(53) Per Mookerjee and Carnduff, JJ. in *Rowland Hudson v. John Pierpont Morgan*, 13 C.W.N. 654 (657)=9 C.L.J. 563=1 Ind. Cas. 356=36 C. 713.

(54) *Ibid.*

(55) *Ranganayagi Ammal v. Mahali Pillay*, 4 L.B.R. 356



The course of the Court is, that, if a receiver is appointed, and the owner of the estate is in possession of part of the premises, application should be made to the Court that the owner should deliver possession to the receiver, who cannot distrain on the owner in possession, as he is not tenant to him. If, therefore, loss arises, it was the party's fault in not applying for that.<sup>56</sup>

The possession of the receiver being deemed to be the possession of the Court, Courts are exceedingly averse to allowing any unauthorized interference therewith. They will not tolerate any attempt to disturb the receiver in his rightful possession, without the previous sanction of the Court.<sup>57</sup> And when a person claiming any interest in the subject-matter of the litigation is prejudiced by the appointment of a receiver, or desires to assert his rights, the proper course is for the Court either to give him leave to bring an action, or to permit him to be examined *pro interesse suo*, the latter being generally regarded as the more convenient and desirable practice.<sup>58</sup>

(56) *Griffith v. Griffith*, 2 Ves. 401.

(57) *Evelyn v. Lewis*, 3 Hare 472.

(58) *Brooks v. Greathed*, 1 Jac. & W. 176. See also next chapter. Case in which persons, not parties to a suit in which a receiver had been appointed, were permitted to apply, by motion or notice, in the suit for the purpose of establishing their rights to obtain an order directing the receiver to make over to them certain properties of which he was holding possession after expiry of the lease under which those properties had been held by him, and which had been granted to his predecessors in title by certain persons through whom the appellants claimed as representatives. See *Mahomed Medhi Galistana v. Zoharra Begum*, 17 C. 285, citing, *Neate v. Pink*, 15 Sim. 450; as explained by Fry, J., in *Brocklebank v. East London Railway Company*, L.R. 12 Ch. D. 839, R. See also on the same point *E. D. Sassoon & Co. v. Moosaji*, 9 Ind. Cas. 485. "It is clear that whatever is the least expensive course, consistent with a satisfactory enquiry, ought to be adopted, in order that the Court shall not, by its own dominant power, hold property on which the parties to the suit have no claim, and hold it in despite of the real owners. If the Court can find out who the real owners are, it should do so, and in the least expensive manner the Court will order an enquiry to be held as to the rights of the applicants or such other persons as may be entitled by assignment or inheritance to the interest of such parties. This enquiry will be held by the Judge on the original side himself, or by such officer as he may send it to, and in manner as he may direct." *Mahomed Medhi Galistana v. Zoharra Begum*, 17 C. 285 (Per Pigot, J.) When a receiver has been appointed under the Provincial Insolvency Act, he becomes an officer of the Court, and if he is about to act in excess of his authority, it is competent to a stranger to bring that fact to the notice of the Court, which has inherent power to review the conduct of the receiver and to make an appropriate order so that the stranger may not be prejudiced by an unlawful act of its own officer; and for this purpose, the Court may hold a summary enquiry. *Hanseswar Ghose v. Rakhal Das Ghose*, 18 C L.J. 359. When a party feels aggrieved at the conduct of a receiver, he should seek redress against the receiver in the proceeding in which he was appointed. If separate proceedings be taken against him, either in that Court or elsewhere, they should be with the leave of the Court under whose authority the receiver was acting. *Kamatchi Ammal v. Sundaram Ayyar*, 26 M. 492.



While the Court will protect the receiver's possession by preventing parties and strangers from interfering with that possession, it will also respect the just rights of third parties by allowing them to make applications and hearing their case with reference to the interests claimed by them.<sup>59</sup>

The Court will make such orders and issue such intructions to the receiver with reference to the possession of the subject-matter of the suit as the respective interests of the parties require.<sup>60</sup>

It sometimes happens that different receivers are appointed in different suits by the same Court <sup>60-a</sup> or by different Courts.<sup>61</sup> In such cases it is obvious that they cannot both be permitted to act together, as the possession and control of each receiver is necessarily exclusive of that of the other.<sup>62</sup>

In such cases it becomes necessary to determine as to who is entitled to precedence, as to who is entitled to act and who is to retire. The general rule in such cases is to allow the receiver first appointed to continue and to withdraw the subsequent orders of appintment.<sup>63</sup> If the two appointments were made on the same day the Court may even inquire, and it is also bound to inquire, into fractions of the day in determining the question of priority, and the one whose appointment is made earlier though on the same day will be given priority.<sup>64</sup>

If the receiver subsequently appointed gets possession of the property, he may be ordered to deliver possession to the person first appointed.<sup>65</sup>

A receiver appointed in the subsequent action will not be justified in interfering with the possession of a receiver previously appointed without some order or direction of the Court.<sup>66</sup>

Possession of the property when the person appointed receiver declines to act.

When the person appointed receiver declines to it, the property is deemed to be in the custody of the Court.<sup>67</sup>

(59) *Vincent v. Parker*, 7 Paige 65.

(60) *Ibid.* See this question discussed at length in the next chapter.

(60-a) *Comer v. Felton*, 10 C. C. A. 28.

(61) *People v. Central Bank*, 53 Brab. 412.

(62) *Ibid.*

(63) *Ibid.* See also the next chapter on the same point.

(64) *People v. Central City Bank*, 53 Barb. 412.

(65) *Ibid.*

(66) *Ward v. Swift*, 6 Hare 309.

(67) *Skinner v. Maxwell*, 68 N.C. 400.

Where the possession of the property changes from one receiver to another, the law deems that the possession of the Court has continued throughout. The change of receiver does not affect the Court's possession. The change of receiver only means the substitution of one officer or agent for another.<sup>68</sup> So also, the property passing from the possession of a temporary receiver to that of a permanent receiver has been held not to take the property out of the possession of the Court.<sup>69</sup>

Change of possession from one receiver to another.

Final decree in suit declaring one of the parties entitled to possession—Receiver bound to give up possession to such party.

Where one of the parties is declared entitled to the property by the final decree in the suit, the Court has no option, but to give possession of the property to such person.<sup>70</sup> Any one else entering into possession would be a trespasser.<sup>71</sup>

It is a well established principle of the law of receivership that a receiver is entitled to a lien on the estate for the ordinary allowance and commission due to him; and as a natural consequence of this lien, it follows that the Court will not compel a receiver, even after he has been discharged, to make over the property in his possession, until his lien has been discharged or provided for by a sufficient indemnity.<sup>72</sup>

Receiver's lien and possession may continue until his remuneration is paid.

(68) See *Mosher v. Order of Iron Hall*, 34 N. Y. S. 817.

(69) *Ibid.*

(70) Per Wilkins J., in *Doulat v. Rameswari*, 26 C. 625 at p. 630 = 3 C.W.N. 461.

(71) *Ibid.*

(72) *Premiall Mullick v. Sumbhoonath Roy*, 22 C. 960 at p. 973.

## CHAPTER XII.

### INTERFERENCE WITH RECEIVER'S POSSESSION— CONTEMPT OF COURT.

General rule as to interference with receiver's possession.

Scope of the rule—Order of appointment being illegal or improper, no justification for interference.

Appointment being collusive or fraudulent, no justification for interference.

Consent of receiver will not justify interference.

Reason of the rule as to interference with receiver being treated as contempt of Court.

Duty of party to suit to surrender property to receiver.

Receiver entitled to the aid of the Court in obtaining possession.

Court will not enter into questions of title in contempt proceedings.

What amounts to interference with receiver :—

- (i) Institution of suit by or against receiver without leave of Court.
- (ii) Attempt to intimidate receiver in his holding possession.
- (iii) Issuing circular to customers of a partnership firm over which receiver is appointed.
- (iv) Inducing workmen not to work or to stay away.
- (v) Attachment of property in hands of receiver in execution of decree.
- (vi) Attachment for non-payment of taxes due to the State.
- (vii) Sale of property in hands of receiver in execution of decree void.
- (viii) Refusal of party to deliver property outside jurisdiction.
- (ix) Party to suit entering into an agreement with receiver controlling his powers.
- (x) Agreement to pay salary of receiver -- Position of receiver.
- (xi) Defendant realising sums after receiver's appointment.

What does not amount to interference :

- (i) Party refusing to deliver to a person other than receiver.
- (ii) Interference when order appointing receiver is void, as for want of jurisdiction.
- (iii) Interference when the order of appointment does not show over what property receiver is appointed.
- (iv) Interference where the order is made conditional and the condition is not fulfilled.
- (v) Interference with receiver of property in foreign country.

In order to constitute interference receiver need not have taken actual possession.

Want of objection on the part of the receiver is immaterial.

Notice of appointment if necessary—Formal service of notice not necessary—

Actual knowledge will suffice.

Leave of Court, when may be obtained.

Jurisdiction of Magistrate to interfere with receiver's possession by order under S. 145, Crim. Pro. Code.

Appointment of receiver removes property from reach of all process of Court or other authority.

Property in the hands of receiver is exempt from attachment by Court.

The rule applies even though the attachment was levied before the appointment of receiver.

Property in the hands of receiver cannot be attached or sold except with the leave of the Court.

Application for rateable distribution if can be made without leave of Court—Prohibitory order against receiver, if equivalent to grant of leave to proceed against him.

Lien of attorney for costs—Application for costs to be paid out of money in hands of receiver in the suit—Practice.

Property in receiver's hands not subject to seizure for taxes.

Appointment of receiver if bars suit by creditor—Receiver when necessary party to such suit.

Effect of appointment on prior existing lien on the property—Rights of third parties.

Third party acquiring rights during pendency of suit.

One of the parties being declared entitled to the property by the final decree, effect of.

Power to distrain for rent, property over which receiver is appointed.

Interference resulting from two or more conflicting receivers.

How one Court deals with property placed in the hands of a receiver by another Court.

Receiver being guilty of contempt of Court.

Power of Court over their receivers.

Provisions of the Code of Civil Procedure regarding the same.

Receiver not bound to obey order of another Court—Payment made by receiver under process of another Court may be disallowed in his accounts.

Power of High Court to commit for contempt.

Power of subordinate Courts to commit for contempt

Power of District Courts to commit for contempt.

Jurisdiction of appellate Court in matters of contempt.

Who can punish for contempt—Only Judge of the Court appointing the receiver.

Power to punish cannot be delegated to ministerial officer of the Court.

Nor can it be delegated to the receiver himself.

Nor has any Court other than the one appointing receiver power to commit for contempt.

Who can apply to take proceedings for contempt.

Punishment in contempt cases.

Practice and procedure in contempt cases—Guilt of the accused must be proved beyond reasonable doubt.

Where damages will be adequate relief, Court will not take the extreme step of committal.

Appeal in contempt cases.

Contempt of order made in chambers.



No rule is better settled in the law of receivers than that where a receiver has been appointed and is put in possession of property by the order of the Court his possession is that of the Court which appointed him and it cannot be disturbed without leave of that Court; and that if any person, without such leave, wilfully interferes with such possession, he commits a contempt of Court, and is liable to be summarily punished therefor.<sup>1</sup> Even interference by an officer of the executive government of the State in a proceeding to enforce the collection of a tax due to the State, will not be tolerated, if such interference be caused without the sanction of the Court.<sup>2</sup>

Any person claiming any title or interest in the property which is in the possession of the receiver, though the title of such person may clearly be superior to that of any of the parties to the suit, must first ask leave of the Court before he takes any steps to secure possession of the property.<sup>3</sup>

(1) *In re Tyler*, 149 U.S. 164; *Abbey v. International & Great Western Ry. Co.*, 5 Tex. Civ. App. 261, 23 S.W.R. 934; *Walker v. Taylor Commission Co.*, 51 Ark. 1. See also *Re British Fuller's Forth Co., Ltd*, *Gibbs v. The Co.*, (1901) 17 T.L.R. 232; *De Montmorency v. Pratt*, (1849) 12 L. Eq. R. 411 and Chap. VIII—"Effect of appointment" Note (70).

(2) *In re Tyler*, 149 U.S. 164.

(3) *Moore v. Mercer, etc., Co.* 15 R. 737. A receiver is an officer of the Court, and any interference with him or with property under his protection amounts to a contempt of Court, and is punishable accordingly. *Helmore v. Smith*, 56 L.J., Ch. 145; 35 Ch. D. 449; 56 L. T. 72; 35 W.R. 157 (Eq.); *Brooks v. Greathed*, 1 Jack & Walk. 178; *Randfield v. Randfield*, 1 Dr. & Sm. 310; *Johnes v. Claughton*, Jac. 573. "When the Court has appointed a receiver and the receiver is in possession, his possession is the possession of the Court and may not be disturbed without its leave. If any one, whoever he be, disturb the possession of the receiver, the Court holds that person guilty of contempt of Court and liable to be imprisoned for contempt." *Kerr on Receiver*, 6th Edition, p. 192, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (292)=22 Ind. Cas. 417. "A man who thinks he has a right paramount to that of the receiver, must, before he presumes to take any step of his own motion, apply to the Court for leave to assert his right against the Receiver." *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (292)=22 Ind. Cas. 417. The possession of the receiver is the possession of the Court, and no one can disturb it without the leave of the Court: see *Aston v. Heron*, (1834) 2 Myl. & R. 390, cited in Argument in *A. M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (595)=7 C.W.N. 390. When the Court has appointed a receiver and the receiver is in possession, his possession is the possession of the Court, and it may not be disturbed without the leave of the Court; and a person who disturbs or interferes with the possession of a receiver is guilty of contempt, and is liable to be committed (*Kerr on Receivers*, pp. 158 and 171, cited in argument in *A. M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (594)=7 C.W.N. 390. A Court will not permit its receiver to be interfered with or dispossessed of property without an application being first made to it for leave (see *Ames v. The Trustees of the Birkenhead Docks*, (1855) 20 Beav. 332; *William Russel v. The East Anglian Railway Company*, (1850) 3 Mac. & G. 104, cited in argument in *A. M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (595)=7 C.W.N. 390). When a receiver is appointed by the Court, his possession is the possession



Even if the original appointment be illegal or improper, that would not justify any interference with the receiver's possession. The law is that while the order continues in existence, whether it be right or wrong, the Court would require that the order shall receive implicit obedience. If the legality of the order is to be questioned, the proper procedure is to make an application to the Court pointing out the illegality or impropriety and asking the same to be vacated. The Court is always open to any proper application calling in question the legality or propriety of its order. Though the order be illegal, the Court will not allow the illegality to be questioned by disobedience.<sup>4</sup>

Consequently it has been held that the Court will not permit its receiver to be interfered with or dispossessed of the property, nor will it allow payment to him to be intercepted, although the order appointing him may be perfectly erroneous. An application must first be made to the Court for leave.<sup>5</sup>

In accordance with this principle the Calcutta High Court in a recent case that came before it held that "the right of a stranger in possession to continue in possession is not affected by the order appointing a receiver, but the fact of his possession does not give him the privilege to interfere with the receiver directed to take possession of the property. His proper course is to apply to the Court for the redress of his grievance. If he interferes with the receiver he does so at his peril. The Court will not permit a receiver appointed by its authority to be interfered with or dispossessed of the property he is directed to receive, by any one, *although the order appointing him may be perfectly erroneous*. The Court requires and insists that application should be made to the

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of the Court, and he cannot be interfered with except with the leave of the Court, see *Ex parte Cochrane*, (1875) L R. 20 Eq. 282, cited by Harrington and Brett, JJ., in *A.M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (598) = 7 C.W.N. 390. The receiver cannot be said to be a party concerned in the dispute. The Court will not allow attachment, as it is an interference with the receiver's possession: *Jogendra Nath Gossain v. Debendra Nath Gossain*, 26 C. 127, cited in argument in *A.M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (596) = 7 C.W.N. 390. The Court will not tolerate interference with a receiver either civilly or criminally. If a receiver does a criminal act, he cannot be indicted *qua* receiver, but as a man: see *Miller v. Ram Ranjan Chakravarti*, 10 C. 1014, cited in argument in *A.M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (596) = 7 C.W.N. 390.

(4) *Russell v. East Anglican Ry. Co.*, 3 Mac. & G. 104; see also *P. Ray Chaudhri v. Nolini*, 18 C.W.N. 289 = 22 Ind. Cas. 417. See also Beach on Receivers, 1887, pp. 246-247.

(5) *Ames v. Birkenhead Docks*, 20 Beav. 332, 24 L.J., Ch. 540; 1 Jur. (N.S.) 529; 3 W.R. 381 (Engl.).

Court for permission to take possession of any property of which the receiver either has taken possession or is directed to take possession.”<sup>6</sup>

Appointment  
being collusive  
or fraudulent, no  
justification for  
interference.

The fact that the appointment was collusive or fraudulent is no justification for interference with receiver's possession.<sup>7</sup>

In the case of *Russell v. East Anglican Ry*; <sup>8</sup> a receiver appointed by a Court, being in possession of property under that order, the sheriff seized the property under a writ, and, upon motion to commit him for contempt, justified his seizure and subsequent conduct by alleging that the order appointing the receiver was an order that ought never to have been made, and that, in fact, it had been obtained by collusion between the plaintiffs and defendants in the suit:—*Held*, ordering the sheriff to withdraw from possession, and pay the costs, that the Court could not, upon such a motion, enter into the question of the propriety or impropriety of the order appointing the receiver, but was bound to vindicate its authority and protect its officer; and that, at the utmost, circumstances could only be looked at in administering the amount of punishment.<sup>9</sup>

As we have already seen, no one may interfere with money or property in the hands of the Court without the consent of the Court; whether such interference is with the consent of a receiver appointed in the cause or in any other way is a matter of no consequence.<sup>10</sup>

In the case of *DeWinton v. Mayor of Brecon*, <sup>11</sup> Lord Romilly, Master of the Rolls, observed, “. . . I apprehend this is clear, that the Court never allows any person to interfere, either with money or property in the hands of its receiver, without its leave; *whether it is done by the consent or submission of the receiver, or by compulsory process against him*. The Court is obliged to keep a strict hand over property in the hands of a receiver, or which, by virtue of the order of the Court, may come into his hands, in order to preserve entire jurisdiction over the whole matter, and to do that which is just in the cause between

(6) *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289=22 Ind. Cas. 417. (*Ames v. The Trustees of the Birkenhead Docks*, 1856, 20 Beav. Rep. 353, F.)

(7) See *Missouri Pacific Ry. Co. v. Lowe*, 61 Kans. 433; *Alderson on Receivers*, 1905, p. 258.

(8) 3 Macn. & G. 104; 20 L.J. Ch. 257; 14 Jur. 1033.

(9) *Russell v. East Anglican Ry*, 3 Macn. & G. 104; 20 L.J., Ch. 257; 14 Jur. 1033.

(10) *De Winton v. Brecon Corporation*, 6 Jur. (N.S.) 1046; 8 W.R. 385; see also *A. M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (597)=7 C.W.N. 390, where it was held that want of objection on the part of the receiver will not justify unauthorized interference with his possession.

(11) 28 Beav. 200 at p. 202.

the parties. It is always to be remembered that the receiver in this case would not have got a penny, except by the order of the Court enabling him to receive it, and entitling him to give a good discharge to the person who paid it; and, consequently, it is strictly money belonging to the Court of Chancery, and the receiver can only discharge himself by paying it in obedience to the direction and order of the Court." <sup>12</sup>

Reason of the rule as to interference with receiver being treated as contempt of Court.

The power to protect the receiver and to punish the party offending against the receiver necessarily follows from the power to appoint. <sup>13</sup>

The reason of the rule was clearly explained by Lord Truro in the case of *Russell v. East Anglican Ry. Co.*, <sup>14</sup> which was an appeal from an order of the Vice-Chancellor upon a motion to commit a sheriff and an under-sheriff for an alleged contempt of Court, the act of contempt alleged against them being their interference with the possession of a receiver by executing certain process upon and taking from him certain goods under a writ of *fi. fa.*, in favour of judgment-creditors of the defendants. In that case, Lord Truro observes as follows:—<sup>15</sup> "When the motion to commit was made, the answer given to it was that, although the receiver, at the time of the levy (of execution) gave notice that he was in possession of the property as an officer of the Court of Chancery, yet that the plaintiffs in the execution considered the order, under which the receiver was appointed, an ill-advised, illegal and indiscreet order, and that therefore they were justified in treating it as a nullity. It was contended, on the other side, that it was wholly irrelevant to the application whether the order was or was not such an order as this Court on further consideration would deem it right to have made; that it was a subsisting order; that the officer was acting under it when he was interrupted by the sheriff; that an officer so acting under the authority of the Court was entitled to the protection of the Court; that if the order was incorrect in a degree which interfered with the legal rights of the plaintiffs in the execution, it was open to them to come to the Court to question the propriety of that order in a proper manner, but that it was not open to them to do so by disobeying it, and by interrupting the officer of the Court. The case was discussed at considerable length, and the Vice-Chancellor appears to have entertained doubts, which I think were well founded, with regard to that order; but he stated, and it appears to me correctly, that that was not the occasion

(12) Per Lord Romilly in *De Winton v. Mayor of Brecon*, 28 Beav. 200 (202).

(13) *Spinning v. Ohio Life Insurance and Trust Co.*, 2 Disney 368.

(14) 3 Mac. & G. 104 (115).

(15) *Ibid.*

on which the Court could be properly called upon to decide on the validity of the objection to the order, and he therefore declined to express any determinate opinion upon that subject, intimating that they might be proper matters to be discussed hereafter \* \* \* \* I have looked with care through the very numerous authorities that have been cited, but it is not necessary for me to go through them. The result appears to be this: that it is an established rule of this Court, that it is not open to any party to question the orders of this Court, or any process issued under the authority of this Court, by disobedience. I know of no act which this Court may do which may not be questioned in a proper form and on a proper application; but I am of opinion that it is not competent for any one to interfere with the possession of a receiver, or to disobey an injunction, or any other order of the Court, on the ground that such orders were improvidently made. Parties must take a proper course to question their validity, but while they exist they must be obeyed. I consider the rule to be of such importance to the interests and safety of the public, and to the due administration of justice, that it ought on all occasions to be inflexibly maintained. I do not see how the Court can expect its officers to do their duty, if they do it under the peril of resistance, and of that resistance being justified on grounds tending to the impeachment of the order under which they are acting."<sup>16</sup>

It is necessary to an orderly and proper procedure in Courts of justice that the attention of the Court be not diverted from the actual controversy in hand. Thus when the Court is dealing with disobedience of an order it will not inquire into the validity of the order. The validity of the order will be assumed for the purpose of dealing with the party disobeying the order. Hence it is that the rule is well established that all proceedings stand until set aside in a direct proceeding for that express purpose.<sup>17</sup>

A party to the suit over whose property a receiver is appointed would clearly be guilty of contempt, if he refuses to comply with an order of Court directing him to surrender possession of all his property, under oath, to the receiver.<sup>18</sup>

**Duty of party to suit to surrender property to Receiver.**

The rules regarding restrictions for imprisonment for debt do not apply to such proceedings;<sup>19</sup> because the order directing the defendant

(16) Per Lord Truro in *Russell v. East Anglican Ry. Co.*, 3 Mac. & G. 104 at p. 115.

(17) *Ames v. Trustees of Birkenhead Docks*, 20 Beav. 332; *Russell v. East Anglican Ry. Co.*, 3 Mac. & G. 104.

(18) *People v. Rogers*, 2 Paige 103. See also *Anon v. Thomas*, (1824) Fl. & K. 621; *Skip v. Harwood*, 3 Atk. 564.

(19) *Ryan v. Kingsbery*, 88 Ga. 361.

to deliver property or money to the receiver is not an order for the payment of a debt. The receiver merely holds the fund as a trustee for whoever may be entitled thereto, and it is possible the defendant himself will be found to be entitled to them.<sup>20</sup>

When a third party who has possession of property of which a receiver has been appointed, declines to surrender it, or refuses to recognize the receiver as the proper custodian of it, the receiver, being an officer of the Court, or, as he has been termed, "the hand of the Court," is entitled to call upon the Court to aid him in the due execution of his trust, otherwise his appointment would often be a nullity. In such a case the Court may direct the third party to deliver possession to the receiver.<sup>21</sup>

The Court will not only protect its receiver in the possession, use and management of the property, and privileges and franchises pertaining thereto and restrain any act of interference therewith, <sup>22</sup> but it will also positively aid him in obtaining possession and getting into his hands the care and control of the property.

In contempt proceedings, the only consideration for the Court will be, to see whether there has been a wilful interference with the receiver's possession, and whether its order has been disregarded. The Court will not enter into the consideration of the legality of the order or the title or right to possession of the property over which the receiver is appointed.<sup>23</sup> Such questions will not be gone into in contempt proceedings.<sup>24</sup>

Hence it has been said that "in a contempt matter the question of title cannot arise: "<sup>25</sup> "The Court will not in such a proceeding, do more than pass upon the bare question of contempt. It will not, directly

(20) *Ryan v. Kingsbery*, 88 Ga. 361.

(21) *Griffith v. Griffith*, 2 Ves. 400. Cf. *Green v. Green*, 2 Sim. 430.

(22) *Fidelity Trust and Safety Vault Co. v. Mobile Street Ry. Co.*, 53 Fed. R. 687. A receiver was appointed in a mortgage suit from whose officer the judgment-debtor took a sum of money as accommodation loan out of the funds of the receiver in his hands. The officer was dead and the judgment-debtor refused to re-pay the amount: *Held*, that the Court had power to direct the judgment-debtor to pay the money in Court within a fixed time; and that in default of such deposit the receiver was entitled to execute the order of the Court as a decree. *Chandra Sekhar Prosad Singh v. Hari Jarendra Sahai*, 10 Ind. Cas. 898 = 15 C.L.J. 254.

(23) See *Balwin v. Hosmer*, 101 Mich. 119; 59 N.W.R. 432; *In re Day*, 34 Wis. 638.

(24) *Ibid*; See also Beach on Receivers (1887), p. 246.

(25) See Beach on Receivers (1887), p. 246.



or indirectly assume to consider or to decide to whom the property belongs or to decide that the receiver has or has not, the right of possession in and to it. . . . A dissatisfied party must seek his remedy by appeal and not by setting at defiance the authority of the Court; and strangers to the suit, who, nevertheless, have an interest in the subject-matter, may have their relief by a direct proceeding looking to the removal of the receiver and the setting aside of the orders in reference to the receivership."<sup>26</sup>

If, in proceedings for contempt, it appears that the claimant has taken the property out of the Court's jurisdiction, and it is impossible for the Court to compel its restoration to the receiver, the Court may order him to pay the receiver the value of the property by way of compensation,<sup>27</sup> without in any way deciding to whom the property so removed rightfully belongs.

What amounts to interference with receiver (i) Institution of suit by or against receiver without leave of Court.

The receiver can neither sue nor be sued without the leave of the Court.<sup>28</sup>

(26) Beach on Receivers (1887), pp. 246, 247; cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (292) = 22 Ind. Cas. 417.

(27) *In re Day*, 34 Wis. 638.

(28) *A. M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 = 7 C.W.N. 390; *Miller v. Ram Ranjan Chakravarti*, 10 C. 1014, R. When a receiver has been appointed to a property, the leave of the Court should be taken to bring a suit in respect of it. But in a suit for declaration of title when the beneficial owner has been made a party, it is not necessary to join the receiver. *Rodger v. Ashutosh Mukerji*, 6 C.W.N. 829. (5 C.W.N. 15, *Expl. and Dis.*) A receiver being an officer of the Court, a party suing him without leave of the Court commits a contempt. A decree obtained against a receiver sued without permission must be set aside. *Balthazar v. The Burma Engineering and Trading Co.*, 17 Ind. Cas. 916. The fact that a receiver against whom an *ex parte* decree without obtaining the leave of the Court to sue him was passed, previously applied to have the *ex parte* decree set aside and for permission to defend the suit does not debar him from attacking the decree as passed without leave of Court *Balthazar v. The Burma, etc.*, 17 Ind. Cas. 916. In a suit for partition of joint family property, a receiver was appointed. While the suit was pending, the respondent, a decree-holder against certain members of the family, made an application for execution of his decree, and the executing Court made an order that the decree should be made over to the receiver with the direction that he should raise the decretal amount from the usufruct of the property. Upon the receiver reporting his inability to raise the amount without selling the family property, the Court ordered the respondent to proceed against the property, and, accordingly, he applied for sale of the property. The appellants, the judgment-debtors, contended that the order appointing the receiver was a bar to the application for the execution of the decree. *Held*, that the order of the Court directing the respondent to proceed against the property of the appellants had the effect of discharging the receiver. Consequently, there was no bar to the present application for execution. *Raghunath Naick v. Gopinath Naick*, A.W.N. (1905) 110. See also Ref. (38), *infra*.

The interference with the receiver's possession need not amount to an actual dispossessing of the receiver, but may consist in commencing suits against him, without obtaining leave of the Court.<sup>29</sup>

Where one Court appoints a receiver any interference by way of suit or other applications against the receiver before another Court without the sanction of the Court that appointed the receiver is not proper. Thus, in the American case of *Smith v. McNamara*,<sup>30</sup> the Court said: "It is clearly against the policy of the law to justify such an irregular and vexatious interference with the orderly and customary method of adjusting and winding up the affairs of a corporation, after a receiver has been appointed. When a Court of competent authority has assumed control in such a case, and possesses a jurisdiction adequate to grant proper relief to all parties interested, such Court should be applied to instead of instituting numerous proceedings before other officers and tribunals to reach a result which could be attained with less expense and trouble by a direct application to the Court which appointed the receiver."<sup>31</sup>

So also, it has been recently held that, in this country also, a receiver cannot be made a party to any suit or proceedings without previous leave of the Court appointing him.<sup>32</sup>

Thus where some prohibitive orders were passed in proceedings under S. 145, Crim. Pro. Code, on a receiver appointed by the High Court, without previous sanction of the Court for making him a party to those proceedings: it was *held* that such orders were without jurisdiction and should be set aside even though the receiver had failed to take any objections to being made a party.<sup>33</sup>

Where a receiver is in possession, an ejectment suit cannot be brought without leave of the Court.<sup>34</sup>

(ii) Attempt to intimidate receiver in his holding possession. So also an attempt to intimidate the receiver in respect of his possession will amount to interference.<sup>35</sup>

(29) *In re Higgins*, 27 Fed. R. 443; *Parker v. Browning*, 8 Paige 388.

(30) 15 Hun. 447.

(31) *Ibid.*

(32) *A.M. Dunne v. Kumar Chandra Kisor*, 7 C.W.N. 390=30 C. 593.

(33) *A.M. Dunne v. Kumar Chandra Kisor*, 7 C.W.N. 390=30 C. 593.

(34) *Angel v. Smith*, 9 Ves. 335; 7 R.R. 214.

(35) *In re Higgins*, 27 Fed. R. 443; *Parker v. Browning*, 8 Paige 388.

The issuing of a circular to the customers of a partnership firm, which is placed in the hands of a receiver and manager, containing statements which would lead them to infer that the business is in a failing condition or might shortly fail, is a libel on the business, and such an interference with the receiver in the discharge of his duties as will constitute a contempt, which the Court will punish by imprisoning the sender of the circular.<sup>36</sup>

Inducing the workmen of a going business concern which is entrusted to the care and management of a receiver, not to work under the receiver or to stay away from duty, will be deemed to be interference with the receiver and will be punished as contempt of Court.

(iv) Inducing workmen not to work or to stay away.

In a case where a railroad was in the possession of a receiver, a person who called himself the chairman of the railway employees sent the following letter to the different foremen, during a period of strike. "Foreman: You are requested to stay away from the shop until the present difficulty is settled. Your compliance with this will command the protection of the Wabash employees. But in no case are you to consider this an intimidation." *Held*, that this was an unlawful interference with the management of the business of the railway by the receiver, and consequently a contempt of Court, for which the writer should be punished.<sup>37</sup>

(v) Attachment of property in hands of receiver in execution of decree

Attachment of property in the hands of receiver without the previous permission of the Court is improper and irregular and will not be recognized by the Court.<sup>38</sup>

(vi) Attachment for non-payment of taxes due to the State.

Similarly even attachment of property in the hands of the receiver for non-payment of any tax due to the State would not be tolerated except with the sanction of the Court.<sup>39</sup>

(36) *Helmores v. Smith*, 56 L.J. (Ch. D.) 145, (1886) 1 Ry. & Corp. L.J. 349.

(37) *In re Wabash Ry. Co.*, 24 Fed. R. 217.

(38) *Mahomed Zohuruddeen v. Mahomed Noorooddeen*, 21 C. 85; *Kahn v. Ali Mahomed*, 16 B. 577; *Hem-Chunder v. Prankristo*, 1 C. 403; *Jogendra Nath v. Devendro Nath*, 26 C. 127=3 C.W.N. 90; *Sarat Chandra v. Apurba Krishna Roy*, 11 Ind. Cas. 187=14 C.L.J. 55=15 C.W.N. 925; *Levenia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=5 Ind. Cas. 390=14 C.W.N. 560; *Jotendra v. Sarfaraj*, 14 C.W.N. 653=6 Ind. Cas. 214. See also Refs. (28 and 29), *supra*.

(39) See the judgment of Lord Truro in *Russell v. East Anglican Ry. Co.*, 3 Mac. & G. 104 (115).

(vii) Sale of property in hands of receiver in execution of decree void.

The levy of an execution on property in the possession of a receiver being a contempt of Court, a sale under such execution is void.<sup>40</sup>

(viii) Refusal of party to deliver property outside jurisdiction.

In a case where a receiver was appointed of property of a defendant in England, and he had property in Ireland which he directed his agents there to refuse to deliver to the receiver, the Court said: "That this is a contempt I have no doubt. It is true that this Court has not the means of sending its officers to carry into effect its orders in Ireland, but it has jurisdiction over all persons in this country and can compel obedience to its orders."<sup>41</sup>

(ix) Party to suit entering into an agreement with receiver controlling his powers.

An agreement between a receiver and a party without the knowledge of the Court is an interference with the receiver's powers and duties and is viewed as a gross contempt of Court.<sup>42</sup>

A receiver appointed by the Court entered into two private agreements, one prior to, the other subsequent to, the date of his appointment, with one of the defendants in the suit, restricting and controlling his powers. Neither agreement was at any time brought to the notice of the Court. It was held that this was a gross contempt of Court, for which the parties were liable to committal. A receiver is a servant of the Court, and has only such power and authority as the Court may choose to give him.<sup>43</sup>

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(40) *Seinberg v. Weinberg*, 54 N.Y.S. 559; 25 Misc. R. 327. See also *Sidlingappa v. Shankarappa*, 27 B. 556=5 Bom. L. R. 529. But it has been held that in order to render a person liable for contempt of Court, there must be an actual interference with or disturbance of the possession of the receiver. Where, therefore, a receiver is in the actual possession of the defendant's real estate, which is subject to the lien of a judgment against the defendant, the levy upon and sale of defendants' interest in the real estate by a sheriff does not disturb the receiver's possession, and is not a contempt of Court. See *Albany City Bank v. Sebermerborn*, 9 Paige 372. The sheriff, in such a case, merely sells the interests of the judgment-debtor in the real estate subject to all just claims of the receiver or of any other person and does not therefore commit a contempt of Court. (*Ibid.*)

(41) *Langford v. Langford*, 5 L.J. (N.S.) Ch. 60. As to the power of the Court to act in personam see Chapter IV on "Jurisdiction to appoint."

(42) *Manick Lall Seal v. Surrut Coomaree Dassee*, 22 C. 648, followed in *Prakash Chandra Sarkar v. Adlam*, 30 C. 696 (698).

(43) *Manick Lall Seal v. Surrut Coomaree Dassee*, 22 C. 648. [Referred to in 30 C. 696 (698); 51 P.L.R. 1902.]

Agreement to pay salary of receiver—Position of receiver.

A promise to pay the salary of a receiver without leave from the Court, even if unconditional, being in contravention of the law, is not binding on the promisor.<sup>44</sup>

A receiver being an officer of the Court, the Court only is to determine his fees or remuneration; and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.<sup>45</sup>

When in a suit for partition the District Judge appointed a receiver for the property in dispute and the defendants while their case was under appeal realized certain sums which the receiver might have realized and the District Judge directed them to pay in at once the sums realized by them to the receiver or into the Court—*Held*, that the property vested in the receiver directly the order appointing him had been passed, and no one had the right to assume his functions without reference to the Court, and the order passed by the District Judge was proper and within his powers.<sup>46</sup>

The following have also been held to amount to interference with the possession of the receiver :—A defendant attempting to collect rents after the appointment of a receiver <sup>47</sup>; defendant removing chattels after hearing the order for a receiver and an injunction made in Court, but before the order has been drawn up <sup>48</sup>; a tenant offering personal violence to the receiver <sup>49</sup>; a creditor of a company attaching debts due to the company after a receiver has been appointed in a debenture-holder's action <sup>50</sup>; a partner injuring the partnership business which is being carried on by a receiver and manager by issuing circulars to customers <sup>51</sup>; and a stranger under a claim of right entering upon land in the possession of a receiver.<sup>52</sup>

Any threatened proceedings against a receiver in respect of trespass or wrongful seizure of goods instituted without the leave of the Court

(44) *Prokash Chandra Sarkar v. E. E. Adlam*, 30 C. 696. An agreement which would interfere with the work of a receiver appointed by a Court should not be enforced as being opposed to public policy. *Fuzlur Rahman v. Anath Bandhu Pal*, 16 C.W.N. 114.

(45) *Ibid.* (22 C. 648, R.)

(46) *Pala Mal v. Tek Chand*, 61 P.L.R. 1902.

(47) *Anon. v. Thomas* (1824) Fl. & K. 621.

(48) *Skip v. Harwood*, (1747) 3 Atk. 564.

(49) *Fitzpatrick v. Eyre*, (1824) 1 Hog. 171.

(50) *Re Derwent Rolling Mills Co., Ltd., York City and County Banking Co. v. Derwent Rolling Mills Co., Ltd.*, (1904), 21 T.L.R. 81 (Eng.).

(51) *Helmore v. Smith*, (2) (1886) 35 Ch. D. 449, C.A.

(52) *Fripp v. Bridgewater and Taunton Canal Co.*, (1885), 3 W.R. 356 (Eng.).



will be restrained, unless the Court is satisfied that the receiver has acted in excess of his authority.<sup>53</sup>

Entry into possession by a remainderman or landlord after determination of the interest (for life or years) in respect of which the receiver was appointed, though technically an interference with the possession of the Court,<sup>54</sup> would probably not be visited with punishment.<sup>55</sup>

What does not amount to interference.

(i) Party refusing to deliver property to a person other than the receiver.

When the parties are by the order of appointment directed to deliver the property to the receiver, a party who refuses to deliver the property to any other person, though he be the nominee of the receiver, will not be liable to be committed for contempt.<sup>56</sup>

(ii) Interference when order appointing receiver is void as for want of jurisdiction.

Want of jurisdiction in the Court that appointed the receiver with regard to the subject-matter of the suit, and the incapacity of such Court to grant the principal relief sought for in the suit may sometimes be an excuse for an unauthorized interference with the possession of such receiver. Such interference may not be punished as a contempt of Court.<sup>57</sup>

(iii) Interference when the order of appointment does not show over what property receiver is appointed.

If the order of appointment does not clearly show over what property the receiver is appointed, interference with his possession under a claim of right will not be restrained.<sup>58</sup>

(iv) Interference where the order is made conditional and the condition is not fulfilled.

Similarly, if the appointment of a receiver is conditional on his giving security, interference with his possession before he completes his security does not amount to contempt of Court.<sup>59</sup>

(53) *Aston v. Heron*, (1834) 2 My. & K. 390.

(54) *Stack v. Royse*, (1861) 12 I. Ch. R. 246 (250).

(55) *Britton v. M. Donnell*, (1843) 5 I. Eq. R. 275.

(56) *Panton v. Zehley*, 19 How. Pr. 394; *Mc. Comb v. Weaver*, 11 Hun. 271; *Ch. Green v. Green*, 2 Sim. 430; *Dove v. Dove*, 2 Deck. 617.

(57) *People v. Weigley*, 155 Ill. 491.

(58) *Crow v. Wood*, (1850) 12 Beav. 271.

(59) *Defries v. Creed*, (1865) 34 L.J. (Ch.) 607; *Edwards v. Edwards*, (1876) 2 Ch. D. 291, C.A.

Where the property over which the receiver is appointed is located in a foreign country and is therefore not in the possession of the receiver, a person, not a party to the suit who takes proceedings in that country is not guilty of contempt for interfering with the receiver's possession.<sup>60</sup>

(v) Interference with receiver of property in a foreign country.

In order to constitute interference receiver need not have taken actual possession.

It may be stated that, in general, Courts of Equity are impatient of any interference with a receiver's possession, not only after the property is finally reduced to possession, but also in many cases where the receiver has been appointed, but has not actually taken possession.<sup>61</sup>

A receiver of lands does not take actual possession but only receives the rents; and he does so, not by virtue of the estate vested in him, but merely as an officer of the Court authorised to collect the rents upon the title of persons who are parties to the action.<sup>62</sup>

Want of objection on the part of the receiver will not justify an authorized interference with his function. In a recent case that came before the Calcutta High Court wherein a Magistrate made the receiver appointed by the High Court a party to certain proceedings concerning disputes as to the possession of immoveable property, and also passed certain prohibitory orders under S. 145 of the Code of Criminal Procedure, as against the receiver and all this was done without the previous sanction of the Court that appointed the receiver, their Lordships Harrington and Brett, JJ., in setting aside the order of the Magistrate as being without jurisdiction, also proceeded to consider whether the fact that the receiver did not object to the jurisdiction of the Magistrate, when he was made a party to the proceedings in the Magistrate's Court made any difference as regards the legality of the Magistrate's order. Their Lordships said:—

Want of objection on the part of the receiver is immaterial.

“We agree that the receiver ought to have objected that he was not a party concerned in the dispute and to have refused to take any step from which it could be said he had submitted himself to the jurisdiction of the Magistrate, but we do not think his failure to take that

(60) *In re Maudslay Sons & Field*, (1900) 1 Ch. 602. But a party to the suit who instructs his agent in the foreign country to resist the receiver in his attempt to enforce the order of the Court will be liable to punishment. See *Langford v. Langford*, 5 L.J.N.S. Ch. 60.

(61) See *Skinner v. Maxwell*, 68 N.C. 400.

(62) *Livinia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=14 C.W.N. 560=5 Ind. Cas. 390. (*Ex parte Evans*, 1879, 13 Ch. D. 252; *Vine v. Raleigh*, 1883, 24 Ch. D. 238 at p. 243, referred to.)

course precludes the Court from setting aside the order against him, if we should be of opinion that such order could not be made."<sup>63</sup>

Notice of appointment if necessary — Formal service of notice not necessary — Actual knowledge will suffice.

It is of ten said that in order to punish a person for contempt of Court for interference with the possession of the receiver the person offending must do so after notice of the order of appointment. But what is meant by notice is not formal notice, but actual notice.<sup>64</sup>

In some cases it has been laid down rather too broadly that an order appointing a receiver is of such notoriety that all persons should be deemed to have constructive notice thereof.<sup>65</sup>

Thus in a case where the defendant was present in Court during the hearing of an application for the appointment of a receiver and consequently knew of the order of appointment, he was held to be guilty of contempt for removing a portion of the assets before the decree was drawn, Lord Hardwicke saying "where a person attends a cause to which he is a party, and had notice of the decree by being present when it was pronounced in Court, if he does any act that is a contravention to the decree, he is guilty of a contempt and punishable for it, notwithstanding the decretal order is not drawn up, or else it would be extremely easy to elude decrees."<sup>66</sup>

An interference with the receiver in possession, by a person claiming to be entitled to the property, will not be permitted after such person has been warned of the position in which the property is placed.<sup>67</sup>

"It is not necessary that he should be officially apprised of the receiver's appointment or even that the formal order should have been actually drawn, provided he has actual notice of the receivership or of the order of Court directing the appointment. Any actual knowledge of the granting of the order is sufficient to fix defendant's responsibility for its violation, the same principle being applicable to such cases as in case of the violation of an injunction."<sup>68</sup>

"An actual or formal service of the order appointing a receiver is not necessary."<sup>69</sup>

Thus "if one, with knowledge of the appointment of the receiver, interfere by attachment or otherwise, with property to which the

(63) *A.M. Dunne v. Kumar Chandra Kishore*, 30 C. 593 (597) = 7 C.W.N. 390. (Per Harrington & Brett, JJ.)

(64) *Skip v. Harwood*, 3 Atk. 564.

(65) *Memphis & Charleston R.R. Co. v. Hoechner*, 14 U.S.C. & C.A. 469.

(66) *Skip v. Harwood*, 3 Atk. 564; *Anonymous*, 3 Atk. 567.

(67) *Fripp v. Bridgewater & Taunton Canal Co.*, 3 W.R. 356 (Eng.).

(68) High on Receivers, 4th Ed., Art. 166, p. 197, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (293) = 22 Ind. Cas. 417.

(69) See Beach on Receivers, p. 238, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (292) = 22 Ind. Cas. 417.

receiver is entitled under the order of his appointment, but of which he had not taken possession, he may be punished for contempt."<sup>70</sup>

But it has been held in certain English cases that "a tenant who continues to pay rent to his landlord, knowing that a receiver has been appointed, cannot be attached for contempt unless he has been actually served with notice of the appointment<sup>71</sup>; nor is a tenant guilty of contempt who, after an order for payment of rent to a receiver, pays it, under threat of proceedings, to a mortgagee in possession who is not a party to the action."<sup>72</sup>

**Leave of Court when may be obtained.**

The petitioner may obtain the requisite leave even when the case has been taken up on appeal.<sup>72-a</sup>

(70) *Richard v. People*, 18 Ill. 551, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (293) = 22 Ind. Cas. 417. "Where a receiver was appointed and the defendant assigned to him his property consisting in part of a vessel which he had previously leased and upon which there was at the time of assignment, some rent past due to the shipowner, it was held that the act of the owner in issuing a distress warrant for the rent, and the act of an officer in taking possession of the vessel, under the distress warrant, while it was in the possession of the receiver, were, each of them, contempt of Court, for which both were liable for punishment. Service of the order appointing a receiver is not necessary." *Noc v. Gibson*, 7 Paige 513, and *Beach on Receivers*, p. 238, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (292) = 22 Ind. Cas. 417.

(71) *Mullarkey v. Denohoe*, (1885) 16 L.R. Ir. 365.

(72) *Underhay v. Read*, (1887) 20 Q.B.D. 209, C.A.

(72-a) *Sarat Chandra Banerjee v. Apurba Krishna Roy*, 11 Ind. Cas. 187 = 14 C.L.J. 55 = 15 C.W.N. 925. (*Banku Behary Dey v. Harendra Nath Mukerjee*, 8 Ind. Cas. 1 = 15 C.W.N. 54; and *Maharajah of Burdwan v. Apurba Krishna Roy*, 10 Ind. Cas. 527, relied upon. In this case, the earlier case of *Pramatha Nath Gangooly v. Khetra Nath Banerjee*, 32 C. 270, was expressly noticed and was not followed. In that earlier case it was held:—(a) that the consent of the Court to an action to be brought against a receiver appointed by the Court is a condition precedent to the right of the party to sue; (b) that the mistake in wrongly bringing a suit without such sanction cannot be rectified by an application for permission to continue the suit; (c) that the Court will not entertain an application to grant leave to institute a fresh action against the receiver in respect of the same cause of action, unless the action so wrongly brought has either been dismissed or withdrawn. *Pramatha Nath Gangooly v. Khetra Nath Banerjee*, 32 C. 270 = 9 C.W.N. 247. This is not now good law. In the later case of *Maharaja of Burdwan v. Apurba*, it was held that where leave was obtained to proceed against the receiver after the application for execution had been presented and before the Court was called upon to make a rateable distribution of the assets, held, that the subsequent grant of leave validated the application. *Maharaja of Burdwan v. Apurba Krishna Roy*, 14 C.L.J. 50. (*Pramatha v. Khetra Nath*, 32 C. 270, Diss.; *Banku v. Harendra*, 15 C.W.N. 54, F.) The Courts are generally reluctant to allow execution to proceed against properties in the hands of a receiver until leave has expressly been granted for that purpose. If the proceedings have been commenced without leave previously obtained, they can be validated by the subsequent grant of leave during their pendency. *Sarat Chandra Banerjee v. Apurba Krishna Roy*, 14 C.L.J. 55. (*Pramatha v. Khetra Nath*, 32 C. 270, Diss.; *Banku v. Harendra*, 15 C.W.N. 54, F.). But it has been held that there is no general rule of law requiring that leave should be obtained from the Official Assignee or the Insolvency Court before any suit could be instituted against that officer or any one claiming under him. *Ramalinga Chetti v. P. B. Anantachariar*, 24 M.L.J. 350.

In dealing with the subject as to when the leave of the Court may be obtained for taking legal proceedings against the receiver or with regard to property in his possession, his Lordship Mookerjee, J., said:—

"In support of the third ground, it has been urged that the doctrine recognised by this Court in the case of *Banku Behary Day v. Harendra Nath Mukerjee*,<sup>73</sup> ought to be extended and that an opportunity should be afforded to the petitioner to obtain the requisite leave even at the present stage of the proceedings. In answer to this contention, it has been argued on behalf of the receiver that the application is made too late, and that leave ought to have been sought at least during the pendency of the proceedings in the Court below. In our opinion, there is considerable force in the contention of the receiver; but we are satisfied that, on the whole, it ought not to prevail.<sup>74</sup>

There can, in our opinion, be no doubt that the rule that ought to be applied in the special and peculiar circumstances of this case is the one laid down in the case last mentioned, which is in accord with the view taken in various classes of cases reviewed in the judgment of this Court in the case of *Jagat Tarini Dasi v. Naba Gopal Chaki*.<sup>75</sup> Thus, upon the authority of the Judicial Committee in *Nawab Muhammad Azmat Ali Khan v. Musammat Lalli Begum*,<sup>76</sup> a suit relating to a grant of property within the meaning of the Pensions Act, 1861, need not be dismissed, because no certificate had been obtained before the commencement thereof, but the suit might be suspended upon an objection that no certificate had been obtained and might proceed when the certificate had been obtained and delivered to the Court. A similar principle was adopted by a Full Bench of this Court with regard to S. 78 of the Land Registration Act in *Alimuddin Khan v. Hira Lal Sen*,<sup>77</sup> and was subsequently extended to cases under S. 60 of the Bengal Tenancy

(73) 15 C.W.N. 54=8 Ind. Cas. 1.

(74) "During the pendency of the proceedings in the Court below, the Court was bound to apply the rule laid down in the case of *Pramatha Nath Gangooly v. Khetra Nath Banerjee*, 32 C. 270, in which it had been ruled that if proceedings have been commenced without leave previously obtained, they could not be validated by the subsequent grant of leave during their pendency. Consequently, if even the petitioner had obtained leave during the pendency of the proceedings in the Court below, it would have been of no avail, because that Court would have been obliged to apply the erroneous rule laid down in *Pramatha Nath v. Khetra Nath*, 32 C. 270, which has been dissented from only more recently in *Banku Behary v. Harendra Nath*, 15 C.W.N. 54=8 Ind. Cas. 1 and *Maharaja of Burdwan v. Apurba Krishna Roy*, 14 C.L.J. 50=10 Ind. Cas. 527." See the same cited by Mookerjee, J., in *Sarat Chandra Banerjee v. Apurba Kṛishna Roy*, 11 Ind. Cas. 187=14 C.L.J. 55=15 C.W.N. 925.

(75) 34 C. 305 (311)=5 C.L.J. 270.

(76) 9 I.A. 8=8 C. 422.

(77) 23 C. 87.



Act in *Hari Krishna Das v. Brindabun Shah*,<sup>78</sup> *Belchambers v. Nawab Sir Syed Hussain Alli*,<sup>79</sup> and *Abdul Kadir v. Meher Ali*.<sup>80</sup> The same principle was applied by the Court of appeal in *Bendell v. Blair*,<sup>81</sup> in which it was held that where the consent of the Charity Commissioner was necessary for the institution of a suit, it was not obligatory upon the Court to dismiss a suit instituted without such consent, but the suit might be stayed to enable the plaintiff to secure the consent, which, as a matter of duty, ought to have been obtained in the first instance, but as a matter of fact obtained at last. A similar principle has also been applied in cases under S. 4 of the Succession Certificate Act.<sup>82</sup> Under these circumstances, we are of opinion that the demands of justice require that the petitioner should be allowed an opportunity to obtain the requisite leave even at the present stage of the proceedings"<sup>83</sup> (*i.e.*) even in appeal.

**Jurisdiction of Magistrate to interfere with receiver's possession by an order under S. 145 of the Code of Criminal Procedure.**

A Magistrate is not competent to make a prohibitive order under S. 145 of the Code of Criminal Procedure as against a receiver appointed by another Court without the previous sanction of that Court.<sup>84</sup> We have already seen that the receiver can neither sue nor be sued without the leave of the Court.<sup>85</sup> He is the officer through whom the Court exercises its powers of management. Such an officer cannot be correctly described as a "party interested in a dispute likely to cause a breach of the peace" within the meaning of S. 145, Criminal Procedure Code.

But even if the officer of the Court could be so described, there would be no jurisdiction in the Magistrate to make any order on him under S. 145 without the sanction of the Court. The Magistrate's order in cases of such apprehended breach of the peace directs that the receiver shall not disturb the possession of the second party; in other words, the Magistrate would be assuming a jurisdiction to interfere with the officer of the Court that appointed the receiver, without the sanction

(78) 1 C.W.N. 712.

(79) 2 C.W.N. 493.

(80) 3 C.W.N. 381=25 C. 712.

(81) (1890) 45 Ch. D. 139=59 L.J. Ch 641; 63 L.T. 265; 38 W.R. 689 (Eng.).

(82) *Hafiz-ud-din v. Abdool*, 20 C. 755; *Sital Chandra v. Manik Chandra*, 9 C.L.J. 331=13 C.W.N. 509=1 Ind. Cas. 254; *Kammatchi v. Mangappa*, 16 M. 454; *Torregrosa v. Pragji*, 16 B 519; *Ralakishan v. Wagar Singh*, 20 B. 76; *Behari Lal v. Majid Ali*, 24 A. 138.

(83) *Sarat Chandra Banerjee v. Apurba Krishna Roy*, 11 Ind. Cas. 187 (190)=14 C.L.J. 55=15 C.W.N. 925. (Per Mookerjee and Casperz, JJ.)

(84) *A. M. Dunne v. Kumar Chandra*, 30 C. 593=7 C.W.N. 390.

(85) *Miller v. Ram Ranjan*, 10 C. 1014.

of that Court; and it is well settled law that the Court will not, without its leave, permit its officer to be interfered with.<sup>86</sup>

The appointment of the receiver and the entrusting of the possession to the receiver have the effect of removing the property from the reach of all process of any Court or other authority.<sup>87</sup> The fact that the attaching judgment-creditor had no knowledge of the receiver's appointment and possession would be good ground for not punishing him in a contempt proceeding, but it would not give validity to the seizure of property in execution of the decree.<sup>88</sup>

Property in the hands of receiver is exempt from attachment by Court.

Property in the hands of a receiver is exempt from judicial process, except to the extent permitted by the appointing Court.<sup>89</sup>

Even though an attachment be levied on property before the appointment of the receiver, it is within the sound discretion of the appointing Court to refuse to permit a sale of the property thereunder. Hence property in the hands of a receiver, though subject to a paramount judgment, cannot be sold under execution without leave of Court. A purchaser of such property at an execution sale buys at his peril, and the sale may be cancelled upon an appropriate application to the execution Court.<sup>90</sup>

(86) *William Russell v. The East Anglican Ry. Co.*, (1850) 3 Mac. & G. 104; *Ames v. The Trustees of the Birkenhead Docks*, (1855) 20 Beav. 332 cited in the judgment of Harrington and Brett, JJ., in *A. M. Dunne v. Kumar Chandra*, 30 C. 593 at p. 598=7 C.W.N. 390.

(87) *Gardner v. Caldwell*, 40 Pac. R. 590; *Regenstein v. Pearlstein*, 30 S.C. 192, 8 S.E.R. 850; See also *Livinia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=14 C.W.N. 560=5 Ind. Cas. 390.

(88) *Gardner v. Caldwell*, 16 Mont. 221; 40 Pac. R. 590.

(89) *Livinia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=14 C.W.N. 560=5 Ind. Cas. 390. (*Try v. Try*, 1851, 13 Beav. 422; 51 E.R. 163; *De Winton v. Brecon*, 1860, 28 Beav. 200; 54 E.R. 342; and *Lane v. Sterne*, 1862, 3 Giff. 629; 66 E.R. 559. Referred to).

(90) *Livinia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=14 C.W.N. 560=5 Ind. Cas. 390. In laying down the above rule his Lordship Mookerjee, J., observed in the course of the judgment:—"The general rule is well settled that property in the hands of a receiver is exempt from judicial process, except of course to the extent permitted by the appointing Court. (*Try v. Try*, 1851, 13 Beav. 422, 51 E.R. 163, *De Winton v. Brecon*, 1860, 28 Beav. 200, 54 E.R. 342, *Lane v. Sterne*, 1862, 3 Giff. 629, 66 E.R. 559) It has even been affirmed that though an attachment was levied on property before the appointment of the receiver, it is within the sound discretion of the appointing Court to refuse to permit a sale of the property thereunder. On this principle, it has been held that property in the hands of a receiver, though subject to a paramount judgment, cannot be sold under execution without leave of Court. A purchaser of such property at an execution sale buys

An attachment of money in the hands of the receiver made without

Property in the hands of receiver cannot be attached or sold except with the leave of the Court.

previous permission or sanction of the Court is improper and irregular, for, such an attachment is an interference with the Court's possession through its official receiver, and the Court will refuse to recognize it.<sup>91</sup>

The appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver, except by permission of the Court.<sup>92</sup>

Although, as we have already observed, the appointment of a receiver does not destroy existing liens and charges upon the property, the appointment prevents the enforcement of such liens and charges by the ordinary legal process.<sup>92-a</sup>

The persons asserting such liens and charges are required to seek their remedy by way of application in the suit in which the receiver is appointed.<sup>93</sup>

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at his peril, and the sale may be cancelled upon an appropriate application to the execution Court. The question was elaborately examined by the Supreme Court of the United States in *Wiswall v. Sampson*, (1852), 14 Howard, 52, and it was ruled that where real estate is in the custody of a receiver appointed by a Court of Chancery, a sale of the property under an execution issued by virtue of a judgment-at-law is illegal and may on this ground be avoided. The decision was based on the ground that the property is in the custody of the Court through its receiver as a fund abiding the result of the pending suit, and all proceedings affecting such fund should be under the control of the Court having its custody; hence a sale of such property under execution or otherwise without leave of such Court is illegal and may be set aside. The same view was emphasized in the cases of *Heidritter v. Elizabeth*, (1884, 112 U. S. 303) and *In re Tyler*, (1892, 149 U. S. 181) in which the doctrine was laid down that if the contrary view were maintained, the very object of the appointment of a receiver might be defeated, the whole fund may pass out of the hands of the Court before the final decree, and the litigation thus becomes fruitless. While a levy upon property in the possession of a receiver may be punished by an appropriate procedure for contempt of Court, that is not the only remedy open to the party aggrieved, but as the levy upon and sale of the property under such circumstances is absolutely illegal because unauthorized by law, the sale may be avoided and possession recovered in any appropriate action commenced against the purchaser at the execution sale or against any other person to whom such possession of such property has come." Per Mookerjee, J., in *Livinia Ashton v. Madhabhoni Dasi*, 11 C.L.J. 489=14 C.W.N. 560=5 Ind. Cas. 390, citing *Walling v. Miller*, 1888, 2 Am. St. Rep. 400, and *Texas Trunk Railway v. Lewis*, 1891, 26 Am. St. Rep. 776. To the same effect is the opinion of leading text-writers on the subject, amongst whom reference may be made to Freeman on Executions, Vol. I, S. 129, and Vol. II, S. 287, and Kleber on Void Judicial Sales, S. 309.

(91) *Mahommed Zohurudeen v. Mahomed Noorooddeen*, 21 C. 85. See also *Kahn v. Alli Mahomed*, 16 B 577.

(92) *Mahommed Zohurudeen v. Mahomed Noorooddeen*, 21 C. 85 (91).

(92-a) *Walling v. Miller*, 108 N.Y. 173. See also *Kamatchi Ammal v. Sundaram Ayyar*, 26 M. 492.

(93) *Walling v. Miller*, 108 N.Y. 173, 15 N.E. 65.

Although the property had been actually attached in execution of a decree before the appointment of the receiver, it would appear that the better practice is to obtain the leave of the Court appointing the receiver, before effecting a sale of the property under such attachment.<sup>94</sup>

This rule is one of convenience. A contrary rule will lead to endless difficulties. For, to permit the property, while in custody of the receiver, to be sold under the process of another Court, though previously attached by such Court, would give rise to a conflict of jurisdiction and may seriously interfere with and impair the receiver's right to the management of the property—a difficulty which Courts should always be careful to avoid.<sup>95</sup>

On the same principle, a receiver will be justified in refusing to make any payment of money out of funds in his hands, except on the order of the Court appointing him. He will not be acting properly if he makes the payment on the order of a different Court attaching such funds.<sup>96</sup>

Property in the hands of receiver of the High Court cannot be attached by a Court in the mofussil, by means of a process issued without the leave or sanction of the High Court.<sup>97</sup>

A proceeding by way of attachment is an interference with the possession of the receiver.<sup>98</sup>

Where a fund, such as the assets of a partnership, is in the hands of the Court through its officer the receiver, one out of the whole body of creditors against the fund will not be allowed to gain priority over the remainder by the expedient of attaching the moneys in the hands of the receiver. Such an attachment is an interference with the Court's possession through its officer the receiver, and may not, therefore, be made without the Court's leave first obtained; which leave will not be granted except on such terms as will ensure equality between the creditors.<sup>99</sup>

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(94) *Walling v. Miller*, 108 N.Y. 173.

(95) *Robinson v. Atlantic & Great Western Ry. Co.*, 66 Pa. St. 160.

(96) *De Winton v. Mayor of Brecon*, 28 Beav. 200.

(97) *Hem Chunder Chunder v. Prankristo Chunder*, 1 C. 403. This case has been distinguished in *Jogendra Nath v. Debendra Nath*, 26 C. 127=3 C.W.N. 90, where it has been held that a judgment-creditor can sell properties in the hands of the receiver of the Court in execution of a mortgage decree, although he cannot execute a decree against such properties by way of attachment and sale.—A proceeding by way of attachment is an interference with the possession of receiver.

(98) *Hem Chunder Chunder v. Prankristo Chunder*, 1 C. 403; *Jogendra Nath v. Debendra Nath*, 26 C. 127=3 C.W.N. 90.

(99) *J. Kahn v. Alli Mahomed Haji Umer*, 16 B. 577.

Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the taking of the accounts of the partners and for the incidental reliefs requisite in such decrees, including the appointment of a receiver and a direction to pay the debts of the firm. *Held*, that the decree for dissolution could so far be regarded as a money-decree and could therefore be attached but not sold. The proper remedy in such cases is by proceedings under section 273 of the Civil Procedure Code.<sup>100</sup>

Where attached property is mortgaged by the judgment-debtor with the consent of all parties concerned, yet, so as to leave some proprietary interest in the judgment-debtor, any judgment-creditor coming after the appointment of the manager and the making of the said mortgage, has a right notwithstanding to attach and sell what remains of the judgment-debtor's interest in the property.<sup>101</sup>

In execution of a decree held by A against B and a receiver appointed by the High Court, the properties owned by the judgment-debtor were sold. C who had previously obtained a decree against B then made an application for rateable distribution of the assets under section 73 of the Civil Procedure Code of 1908: *Held*, that although leave was granted by the High Court to A to proceed with the execution of his decree against B and the receiver, yet it was necessary for C to apply for leave in order to enable him to prosecute his application against the receiver under section 73.<sup>102</sup>

**Application for rateable distribution if can be made without leave of Court—Prohibitory order against receiver, if equivalent to grant of leave to proceed against him.**

(100) *Sidlingappa bin Irappa v. Shankarappa bin Karibasappa*, 27 B. 556 = 5 Bom. L. R. 529. The Court said in the course of the judgment as follows: "We think, having regard to the principle laid down by Mr. Justice Farran in the case of *J. Kahn v. Alli Mahomed Haji Umar*, (16 B. 577), followed in the case of *Mahommed Zohuruddeen v. Mahommed Noorooddeen*, (21 C. 85), it is very doubtful whether such an execution can be allowed. An officer of the Court is now executing that decree, and collecting the assets of the late firm and paying the debts of the firm, the decree-holders in the latter suit ranking as creditors of that firm. But it is admitted before us that the decree in the suit for dissolution of partnership can be so far regarded as a money-decree, and that therefore it can be attached but cannot be sold. This being so, it is clear that the applicants' remedy is not by a sale of the decree, but by proceeding under the provisions of S. 273 of the Civil Procedure Code; see the case of *Gopal v. Joharimal*, 16 B. 522. We therefore vary the order of the Subordinate Judge, and direct that the procedure laid down in S. 273 be followed. The order as to sale will be set aside. Each party to bear his own costs in this Court." *Sidlingappa bin Irappa v. Shankarappa bin Karibasappa*, 27 B. 556 at pp. 559, 560 = 5 Bom. L. R. 529 (Per Candy, C.J.).

(101) *In the matter of Messrs. John Tiel & Co. v. Abdool Hye*, 19 W.R. 317.

(102) *Sarat Chandra Banerjee v. Apurba Krishna Roy*, 11 Ind. Cas. 187 = 14 C.L.J. 55 = 15 C.W.N. 925.



His Lordship Mookerjee, J., said in the course of the judgment :—

“ In our opinion, the view put forward by the petitioner cannot possibly be supported. It is well settled that a Court will not permit execution against property in the hands of a receiver till leave has been obtained from the Court by which the receiver was appointed.<sup>103</sup> \*

\* \* \* But it has been contended in this case that the fund against which the petitioner desires to proceed is not in the hands of the receiver, that although it belongs to the receiver, it is in the custody of the Court, and that, consequently, if the application is granted, the principle mentioned will not be contravened. In our opinion, there is no foundation for this contention.<sup>104</sup> \* \* \* \*

In the case before us, it cannot be disputed that a portion of the assets held by the Court belongs to the receiver. If the claims of the persons that have obtained leave to proceed against the receiver, are satisfied, there will still remain a balance which the receiver will be entitled to withdraw, unless the petitioner before us is allowed to prosecute his claim for rateable distribution. It is manifest, therefore, that the prosecution of the application made by the petitioner must result in interference with property belonging to the receiver. Although nominally the property in the case before us is in the custody of the Court, there is no room for controversy that the Court holds possession for the benefit of the receiver and is bound to make over the balance to him after the claims of the two creditors mentioned shall have been satisfied.<sup>105</sup> \* \* \* \*

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(103) See the authorities reviewed in the judgment of the Calcutta High Court in the cases of *Livenia Ashton v. Madhabmoni Dasi*, 11 C.L.J. 489=5 Ind. Cas. 390=14 C.W.N. 560, and *Jotindra Nath v. Sarfaraj Mia*, 14 C.W.N. 653=6 Ind. Cas. 214.

(104) The case of *In re Maudslay Sons and Field*, [1900] 1 Ch. 602=69 L.J. Ch. 347=82 L.T. 378=48 W.R. 568=8 Manson 38, is clearly distinguishable. There it was ruled that where the Court appoints a receiver over property out of its jurisdiction the receiver is not put in possession of such foreign property by the mere order of the Court. Something further has to be done, and until that has been done in accordance with the foreign law, any person, not a party to the action, who takes proceedings in the foreign country for the purpose of establishing a claim upon the foreign property is not guilty of a contempt of Court on the ground of interference with the receiver's possession or otherwise. The subsequent decisions in *In re Derwent Rolling Mills Company*, (1904-05) 21 T.L.R. 81 and 701 and *In re West Cumberland Iron and Steel Company*, (1893) 1 Ch. 713; 69 L.J. Ch. 367; 3 R.—260; 60 L.T. 751; 41 W.R. 265 (Eng.) show, however, that this principle does not apply to cases in which the assets are within the jurisdiction of the Court.

(105) This view is supported by the decision in *Ames v. The Trustees of the Birkenhead Dock*, (1855) 20 Beav. 332 (353); 24 L.J. Ch. 540; 1 Jur. (N.S.) 529; 3 W.R. 381 (Eng.), the principle of which is clearly applicable to the circumstances of the above case. Reference may also be made to some observations in the case of *In re Clarke*, (1898) 1 Ch. 336; 67 L.J. Ch. 234; 78 L.T. 275; 14 T.L.R. 274; 46 W.R. 337, in which it was ruled that an order appointing a receiver must give possession of the goods before the principle invoked can be applied.

In the case before us, however, as we have already explained, the funds are held by the Court for the benefit of the receiver and after the claims of the creditors who have obtained leave are satisfied, the receiver will be entitled as a matter of right to take out the surplus and apply it for the purpose of the litigation in which he was appointed. Under these circumstances, it is impossible to hold that the receiver has not such possession as would entitle him to resist the enforcement of a claim by a creditor who has not obtained leave to proceed against him. We must, therefore, hold that it was necessary for the petitioner to obtain leave from the Court by which the receiver was appointed before he could be permitted to prosecute his application for rateable distribution against him under S. 73, Civil Procedure Code.<sup>106</sup>

In this case <sup>107</sup> it has also been held that a prohibitory order under S. 272 of the Code of 1882 cannot be regarded as equivalent to a grant of leave to the decree-holder to execute his decree against the properties in the hands of the receiver. <sup>108</sup>

The attorneys for the plaintiff claimed a lien, on the amount in the hands of the receiver of the Court to the credit of the plaintiff in a partition suit, for the costs of the suit which had been secured by the deposit with the attorneys of the title-deeds of the plaintiff's family dwelling-house which formed a portion of the property sold by the receiver under the decree in the suit. *Held*, on an application by the attorneys for payment to them of such costs, that the lien could not be given effect to in summary proceedings of this nature, but should form the subject of a regular suit. Except in such a suit it is not the practice of the Court to make any order for payment of costs between an attorney and his client. <sup>109</sup>

**Lien of attorney for costs—Application for costs to be paid out of money in hands of receiver—Practice.**

No rule of practice better illustrates the extreme jealousy with which Courts of justice protect the possession of the estate by their receivers than the rule which obtains in some of the American States exempting such property from attachment for ordinary taxes and other demands of the State. Such property, though subject to taxation under the ordinary revenue laws, has been held not liable to be attached and

**Property in receiver's hands not subject to seizure for taxes.**

(106) *Sarat Chandra Banerjee v. Apurba Krishna Roy*, 11 Ind. Cas 187=14 C.L.J. 55=15 C.W.N. 925.

(107) *Ibid.*

(108) *Ibid.*

(109) *Mahommed Zohuruddeen v. Mahommed Noorooddeen*, 21 C. 85.

sold by an officer of the State in satisfaction of unpaid taxes. It has been suggested that the proper remedy in such cases would be by way of an application in the suit in which the receiver is appointed.<sup>110</sup>

It is competent to the Court to enjoin the officer from levying upon the property, and it has undoubted jurisdiction to punish him for contempt for violating such injunction.<sup>111</sup>

The doctrine that taxing officers have no right to interfere with property in the possession of receivers is clearly set forth by Fuller, C.J., in the following words.<sup>112</sup> His Lordship says:—

“The general doctrine that property in the possession of a receiver appointed by a Court is *in custodia legis*, and that unauthorized interference with such possession is punishable as a contempt, is conceded; but it is contended that the salutary rule has no application to the collection of taxes. Undoubtedly property so situated is not thereby rendered exempt from the imposition of taxes by the Government within whose jurisdiction the property is, and the lien for taxes is superior to all other liens whatsoever, except judicial costs, when the property is rightfully in the custody of the law; but this does not justify a physical invasion of such custody and a wanton disregard of the orders of the Court in respect of it. The maintenance of the system of checks and balances characteristic of republican institutions requires the co-ordinate departments of Government to refrain from any infringement of the independence of each other, and the possession of property by the judicial department cannot be arbitrarily encroached upon, save in violation of this fundamental principle. The levy of a tax warrant, like the levy of an ordinary *fiery facias*, sequesters the property to answer the exigency of the writ; but property in the possession of the receiver is already in sequestration, already held in equitable execution; and while the lien for taxes must be recognized and enforced, the orderly administration of justice requires this to be done by and under the sanction of the Court. It is the duty of the Court to see to it that this is done; and a seizure of the property against its will can only be predicated upon the assumption that the Court will fail in the discharge of its duty, an assumption carrying a contempt upon its face.”

If an application is made to the Court, and if the tax claimed be just and proper, the Court would direct the receiver to pay the same out of the funds in his hands.

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(110) *In re Tyler*, 149 U.S. 164.

(111) *Ibid.*

(112) *Ibid.*

The appointment of a receiver does not of itself debar a creditor of the person over whose estate the receiver has been appointed from suing for his claim, provided that such suit does not in any way interfere with the possession or jurisdiction of the Court appointing the receiver.<sup>113</sup>

Appointment of receiver if bars suit by creditor - Receiver when necessary party to such suit.

But where property in the hands of the receiver is intended to be affected by the result of the litigation the receiver is a proper and necessary party to such suit by way of addition to and not in substitution for the parties primarily responsible.<sup>114</sup>

In the course of the judgment the Court made the following observations which may be noted as containing a lucid exposition of the law on the subject :—

“It may be conceded that the appointment of a receiver does not, of itself, debar a creditor of the person over whose estate the receiver is appointed, from pursuing his legal remedy by action against such debtor, or from bringing a suit for relief touching the same property, provided such suit does not in any way interfere with the possession or jurisdiction of the Court by which the receiver was appointed. The reason for the limitation is obvious, because no decree or judgment in such a suit can operate to disturb the custody of the receiver, or be satisfied from the property in the hands of the receiver, except through the administering assistance of the Court appointing him. The position, therefore, is that the appointment of a receiver does not affect the rights of the creditor, but before he can exercise them effectively, he has to proceed against the receiver, and for this purpose he must first obtain leave of the Court by which the receiver was appointed. The proper course for the creditor, under such circumstances, is to apply to the Court by which the receiver has been appointed, for an order that the receiver do pay the rent, or that the creditor be at liberty to proceed to enforce his rights according to law. The principle applicable to cases of this description is that if the contrary view were taken, rightful possession of the property by the receiver might ultimately be interfered with, and no Court should tolerate a contempt of its authority by an attempt to deprive the receiver of possession by

(113) *Jotindra Nath Chowdhury v. Sarfaraj Mia*, 14 C.W.N. 653 (654) = 6 Ind. Cas. 214.

(114) *Ibid.*

force, or even by a suit or other proceeding against him, without permission duly obtained.<sup>115</sup>

The object of the rule is to protect the estate in the hands of a receiver from unnecessary and expensive litigation, to preserve it for the equal benefit of those equally interested in its distribution, and to keep the property at all times within control of the Court, which cannot be done if the receiver might be sued without its leave or perhaps without its knowledge in any other Court or jurisdiction; much less can this object be gained if decrees against the property were allowed to be passed without the knowledge and behind the back of the receiver.<sup>116</sup>

It is obvious, however, that the receiver of the property of a party to a litigation, is not a necessary party if no attempt is made thereby to interfere with the right of the receiver to the property entrusted to his care. Thus it was ruled that a receiver appointed in the course of a mortgage suit is not a necessary party to a suit by a creditor of the mortgagor, for the enforcement of a purely personal claim against him ;

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(115) *Noe v. Gibson*, 7 Paige 513 (1839), cited in *Jotindra Nath Chowdhury v. Sarfaraj Mia*, 14 C.W.N. 653 at pp. 655-657=6 Ind. Cas. 214. To the same effect is the decision in *Martin v. Black*, 9 Paige 641 (1842) ; 38 Am. Decs 574. A similar point arose for consideration in the cases of *Gooch v. Haworth*, 3 Beaven 428 (1841) and *In re Battersheg*, 31 L.R. Ir 73 (1892). In the first of these cases, it was ruled that where a landlord wishes to distrain for rent of property in possession of the receiver, the Court if satisfied that the legal right of distress was paramount to the title of the party for whose benefit the receiver was appointed, would allow the distress to be made. In the second case, it was ruled that if leave is asked by a landlord to commence action for recovery of possession for non-payment of rent, the Court in disposing of such application, will be slow to interfere with the rights of the landlord, and will only impose conditions, when necessary, for the benefit of the estate, and not likely to occasion the landlord any appreciable injury. To the same effect are the decisions in *Sutton v. Rees*, 9 Jurists N. S. 456 ; 8 L. T. N. S. 343 (1863) and *Eyton v. Denbigh*, 38 L. J. Ch. 74 (1868). These cases make it obvious that if the property is intended to be affected by the result of litigation, the receiver ought to be made a party to the suit by the creditor, and for this purpose, leave of the Court by which he was appointed, should first be obtained. Property in the hands of a receiver is in the custody of the Court ; he is not liable to suit in respect of such property in any Court except that of which he is an officer ; and a receiver so appointed by judicial authority, cannot be subject to suit except with the leave of the Court whose officer he is, granted in the cause in which he was appointed. It follows, consequently, that a right asserted against a receiver to property rightfully in his hands must ordinarily be worked out either in the action in which the receiver was appointed or in an independent action brought duly upon the leave of the Court by which the appointment was made. *Searle v. Choat*, 25 Ch. D. 723 (1884) ; *Angel v. Smith*, 9 Ves. 335 ; 7 R. R. 214 (1804) ; *Porter v. Savin*, 49 U. S. 473 ; *Miller v. Ram Ranjan*, 10 C. 1014 and *Barton v. Barbour*, 104 U. S. 126.

(116) In fact this was pointed out by the Calcutta High Court in the cases of *Ashton v. Madhab Moni*, 11 C.L.J. 489, and *Hem Chunder v. Prankristo*, 1 C. 403, (which was not followed on the Original Side of this Court in *Jogendra Nath v. Debendra Nath*, 26 C. 127=3 C.W.N. 90) that, if in execution of such a decree, the property is sold without notice to the receiver, the sale is liable to be cancelled upon a proper application to the execution Court.



but in an action to enforce a lien against a specific property in which a receiver is interested, he should be made a party.<sup>117</sup> \* \* \*

"It cannot be disputed that under such circumstances the receiver is a proper party and he may be admitted on his own application to appear and defend, if the interest which he represents renders it proper or necessary; and he is not only a proper but also a necessary party by way of addition to and not substitution for the parties primarily responsible, if the object of the suit is to affect a property lawfully in his charge. We must consequently hold in the present case that the receiver ought to have been joined as a party defendant."<sup>118</sup>

Effect of appointment on prior existing lien on the property—Rights of third parties.

If there be prior existing liens on the property, they are not affected by the appointment of the receiver and his possession, except as to the manner of enforcing them.<sup>119</sup>

A third person claiming an interest in lands over which a receiver has been appointed, should, if he is injured by the appointment, apply to the Court but not interfere with the tenants.<sup>120</sup>

Where an order of the Court has, by mistake, put a receiver in possession of goods, the proper course for a judgment-creditor, seeking to levy execution against them, is to move to discharge the order, or to apply to be examined *pro inter esse suo*.<sup>121</sup>

Obstructing a receiver in taking possession of the property of a person, against whom insolvency proceedings are pending, under the

(117) *Janki Kour v. Sham Shivendra*, 10 C.L.J. 23=2 Ind. Cas. 958. This is well illustrated by the cases of *Demy v. Colc*, (1900) 22 Washington 392; 79 Am. St. Rep. 940 and *Flynn v. Farth*, (1901) 25 Washington 105; 64 Pac. 904. In the first of these cases it was pointed out that although a receiver is in one sense the custodian of the property involved in the litigation in which he is appointed, he has such special property therein as to make him the representative of the rights of the parties in all actions or proceedings affecting the property; and in this character, he is entitled to notice in all cases in which parties would have been entitled to be brought before the Court had there been no receiver. As was observed in *Henning v. Raymond*, 35 Minn. 303; 29 N. W. 132, the title to the property for the time being and for the purpose of administration and disposition, may in one sense, be said to be in the Court; the receiver is the right arm of the Court in exercising the jurisdiction invoked in such cases, and he is consequently entitled to be represented in a suit the result of which may be to affect the property in *custodia legis*. *Jaggat Tarini v. Naba Gopal*, 34 C. 305=5 C.L.J. 270. In the second case, it was observed that although the receiver is a proper and necessary party, he ought not to be sued alone, but ought to be joined as a defendant along with the parties who are primarily liable to satisfy the claim of the plaintiff, and upon whose liability, if any exists, a judgment must be finally entered (see also the notes to *American Bank v. McGettigan*, (1899) 71 Am. St. Rep. 352).

(118) *Jotindra Nath Chowdhury v. Sarfaraj Mia*, 14 C.W.N. 653 at pp. 657, 658=6 Ind. Cas. 214.

(119) *Dann. Mfg. Co. v. Parkhurst*, 125 Ind. 317 (Amer.)

(120) *Wardle v. Lloyd*, 2 Moll. 388.

(121) *Fowler v. Haynes*, 2 N.R. 156.

orders of the Court, is a contempt of the Court. The receiver should not be resisted, and the person claiming the property as his by purchase may move the Court against the action of the receiver.<sup>122</sup>

It is not the practice of the Court to refuse liberty to try a right claimed against its receiver, unless it is perfectly clear that there is no foundation for the claim.<sup>123</sup>

It has however been held that a judgment-creditor can sell properties in the hands of a receiver of the Court in execution of a mortgage-decree, although he cannot execute a decree against such properties by way of attachment and sale.<sup>124</sup>

Charity property, over which a receiver had been appointed, included a chapel, where service had for a long time been performed by the nominee of the master of the charity. The church-warden of the adjoining parish alleged that the chapel was the parish church, and an ecclesiastical benefice distinct from the charity, and, in order to try the right, prevented the master's nominee, who had no license from the bishop, from performing the service. It was held that an injunction should be granted to restrain him from further interference, with liberty to take legal proceedings to establish his claim.<sup>125</sup>

"If the receiver is appointed on behalf of one of several incumbrancers, the order generally contains a declaration that the appointment of the receiver is to be without prejudice to the rights of, or is not to affect, the prior incumbrancers upon the estate who may think proper to take possession of the estate and premises, by virtue of their respective securities; and usually directs an inquiry what incumbrances there are affecting the estate, and the priorities thereof respectively; and orders that the receiver do, out of the rents and profits to be received by him, keep down the interest and payments in respect of such incumbrances, according to their priorities; and be allowed the same in passing his accounts."<sup>126</sup>

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(122) *E. D. Sasson & Co. v. Moosaji Esmailji Lotia*, 9 Ind. Cas. 485.

(123) *Lane v. Capsey*, 61 L.J. Ch. 55; (1891) 3 Ch. 411; 65 L.T. 375; 40 W. R. 87 (Eng.); *Randfield v. Randfield*, 3 De G. F. & J. 776; 31 L. J. Ch. 113; 8 Jur. (N.S.) 161; 5 L. T. 698.

(124) *Jogendra Nath Gossain v. Debendra Nath Gossain*, 26 C. 127 = 3 C.W.N. 90.

(125) *Att. Gen. v. St. Cross Hospital*, 2 W.R. 542 (Eng.).

(126) For forms of orders, see Seton on Judgments and Orders, 760, 791, 792. *Lewis v. Ld. Zouch*. 2 Sim. 388, 393; and *Smith v. Effingham*, 2 Beav. 232.

A Court which has taken possession of property through its receiver, for and on behalf of the parties to the suit, should not concern itself with any claims of, or rights which may have accrued to, any third party by reason of any assignment or transfer during the pendency of that suit. Any interference with that possession by any third party would be a contempt of the authority of that Court.<sup>127</sup>

Third party acquiring rights during pendency of suit.

But when one of the parties is declared entitled to the property by the final decree in the suit, the Court has no option but to give possession of the property to such person. Any one else entering into possession would be a trespasser.<sup>128</sup>

When property over which a person claims a right to distrain is in the hands of a receiver the Court of Chancery will give leave to distrain, unless it is clear that the property is not within the power of distress;<sup>129</sup> but distraint without the previous sanction of the Court is improper.<sup>130</sup>

Power to distrain for rent property over which receiver is appointed.

Where a receiver is appointed, and the person in possession refuses to attorn, or to deliver up possession, it not appearing in what right the possession is held, the proper course is to move that the person may attorn. In such a case, it is not necessary, in the first instance, to make such person a party to the suit.<sup>131</sup>

In case of conflict arising out of the appointment of two or more receivers, the Courts will not inquire into the priority of appointment, but should only consider which suit was first commenced, and, if necessary, take into consideration fractions of a day.<sup>132</sup> The question which of the several receivers first obtains actual possession of the assets will not enter into the determination of the matter.<sup>133</sup> A receiver subsequently appointed will not be allowed, except with leave of the Court, to interfere with the possession of the first.<sup>134</sup> Where, however,

Interference resulting from two or more conflicting receivers.

(127) Per Wilkins, J., in *Doulat v. Rameswari*, 26 C. 625 (629) = 3 C.W.N. 461.

(128) Per Wilkins, J., in *Doulat v. Rameswari*, 26 C. 625 (630) = 3 C.W.N. 461.

(129) *Eyton v. Denbigh, Ruthin and Corwen Ry.*, 38 L.J., Ch. 74; 16 W. R. 928.

(130) *Ibid.*

(131) *Reid v. Middleton*, Turn. & R. 455.

(132) *East Tennessee, Virginia & Georgia R. R. Co., v. Atlanta & Florida R. R. Co.*, 49 Fed. R. 608, 15 L. R. A. 109.

(133) *People v. Central City Bank*, 53 Barb. 42, 35 How. Pr. 428.

(134) *Ward v. Swift*, 6 Hare 302.

the several receivers are joint receivers and their duties do not conflict with one another, there can be no objection to allowing all of them to continue.<sup>135</sup>

A receiver appointed to get in property, part of which is in the possession of another receiver, cannot deprive the latter of the possession without the authority of the Court.<sup>136</sup>

One Court will not interfere with the custody of property held by the receiver of another Court, but may establish by its judgment a debt against the receivership, which would ordinarily be recognized and given effect to by the Court appointing the receiver. But the payment of the debt is necessarily under the control of the latter Court.<sup>137</sup>

How one Court deals with property placed in the hands of a receiver by another Court.

Just as third parties would be guilty of contempt of Court, so also, receivers may in certain circumstances be similarly guilty.<sup>138</sup> Thus a receiver neglecting or refusing to comply with the Court's order may be committed for contempt.<sup>139</sup> So also, it has been held that a purchase by a receiver in insolvency of property belonging to the insolvent's estate is irregular, and the Court ought not to sanction such a purchase.<sup>139-a</sup>

Receiver being guilty of contempt of Court.

But as a matter of practice in a contest between two or more receivers appointed in different suits, but over the same property, the Court will hesitate much before exercising its extreme powers of committal for contempt against the subsequent receivers for interfering with the possession of the first, when the dispute as to possession has been determined, and the only object of the application is to compel the payment of costs.<sup>140</sup>

Where, however, a receiver subsequently appointed wilfully interferes with the possession of a receiver previously appointed over the same property by the same Court or by a different Court he will be held to be guilty of contempt.<sup>141</sup>

(135) See Alderson on Receivers, 1905, S. 207; p. 252.

(136) *Ward v. Smith*, 6 Hare (312); 12 Jur. 173.

(137) *Dillingham v. Russell*, 73 Tex. 47; 11 S.W.R. 139; 15 Am. St. R. 753.

(138) See *Spinning v. Ohio Life Insurance & Trust Co.*, 2 Desney 368.

(139) See Alderson on Receivers, 1905, S. 220, p. 265.

(139-a) *Ram Komal Saha v. Bank of Bengal*, 5 C.W.N. 91.

(140) *Ward v. Swift*, 6 Hare 309.

(141) *Ibid Spinning v. Ohio Life Insurance & Trust Co.*, 2 Desney 368. See also *People v. Central City Bank*, 53 Barb. 412.

Since a receiver is not a party in interest, but merely an officer or representative of the Court, he may be compelled to turn over the property as directed by the order for his discharge, notwithstanding that he has preferred an appeal against such order. And if he refuses to comply with such order as to disposition of the assets, obedience may be enforced by attachment. But the Court will not under such circumstances, direct an attachment to issue in the first instance, when the receiver expressly disclaims any intentional disregard of its authority.<sup>142</sup>

**Power of Court over their receivers.**

**Provisions of the Code of Civil Procedure regarding the same.**

The Code of Civil Procedure also gives the Courts in this country express power to punish receivers for wilful neglect of duty. O. XL, r. 4 of the Code provides :—

“When a receiver—(a) fails to submit his accounts at such periods and in such form as the Court directs, or (b) fails to pay the amount due from him as the Court directs, or (c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.”<sup>143</sup>

As to the reason for framing this rule the Select Committee said in their report :—

“We have re-drafted this rule on the lines of S. 18 (4) of the Provincial Insolvency Act, 1907. We think that the power to imprison receivers is too wide and should be omitted.”<sup>144</sup>

**Receiver not bound to obey order of another Court—Payment made by receiver under process of another Court may be disallowed in his account.**

Any payment made by a receiver under the compulsory process of another Court and without the sanction of the Court that appointed him will not be allowed by the Court by which he was appointed on the settlement of his accounts. The Court adopts this apparently strict rule in order to preserve its entire jurisdiction over the subject-matter.<sup>145</sup>

In the case of *De Winton v. Mayor of Brecon*, Lord Romilly said : “It is always to be remembered that the receiver in this case would never have got a penny except by the order of the Court enabling him to

(142) *In re Rachel Colvin*, 3 Md. Ch. 300.

(143) See Civ. Pro. Code, O. XL, r. 4.

(144) See the Report of the Select Committee.

(145) *De Winton v. Mayor of Brecon*, 28 Beav, 200. Cf. *People's Bank v. Calhoun*, 210 U.S. 256.



receive it, and entitling him to give a good discharge to the person who paid it, and, consequently, it is strictly money belonging to the Court of Chancery, and the receiver can only discharge himself by paying it in obedience to the direction and order of that Court.”<sup>146</sup> This is a concise statement of the law applicable as well to the Courts of this country as in England.

“That property in the hands of a receiver by virtue of an order of one Court cannot be sold under process from another Court, is a proposition of law too well established to be for a moment called in question.”<sup>147</sup>

Under the authority conferred by the charters of the Supreme Courts and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt.<sup>148</sup> The High Court may issue an attachment for contempt.<sup>149</sup>

As regards the High Courts in India, the remedies provided by the Civil Procedure Code in cases of disobedience to an order of Court may be regarded as cumulative.<sup>150</sup>

They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience.<sup>151</sup>

(146) *De Winton v Mayor of Brecon*, 28 Beav. 200.

(147) *St. Louis, Arkansas and Texas R.R. Co. v. Whitaker*, 68 Tex. 630; 5 S.W.R. 448. (Per Cur.).

(148) *Hassonbhoy v Cowasji Jehangir Jassawalla*, 7 B. 1.

(149) *Navivahoo v. Narotamdas*, 7 B. 5.

(150) *Hassonbhoy v. Cowasji Jehangir Jassawalla*, 7 B. 1.

(151) *Ibid.*

The power of the High Court to imprison for contempt is irrespective of the Indian Codes, *Surendranath Banerjee v. Chief Justice and Judges of the High Court of Bengal*, L.R. 10 I.A. 171; *Hassonbhoy v. Cowasji Jehangir Jassawalla*, 7 B. 1; *Navivahoo v. Narotamdas Candas*, 7 B. 5; *Martin v. Lawrence*, 4 C. 655; followed in *Balwantrao v. Ramchandra*, Ratanlal's Unreported Criminal Cases, 1892, p. 614. The High Court has no jurisdiction to punish as an offence in a summary proceeding conduct in relation to a proceeding in the Mofussil Criminal Court, such as commenting on a case pending before that Court, as such jurisdiction is not inherited from any of the three abolished Courts—the Supreme Court, the Sudder Dewany and the Sudder Nizamat Adalats—and is not vested in the High Court by the Charter Act of 1861 or the Letters Patent under that Act, and as such conduct is not contempt of the High Court, and the High Court's power of superintendence over the Mofussil Courts does not imply any power of protecting those Courts from improper interference. *Governor of Bengal v. Moti Lal Ghosh*, 20 Ind. Cas. 81=41 C. 173=18 C.L.J. 452=14 Cr. L.J. 321=17 C.W.N. 1253. (*Rex v. Davies*, 1906, 1 K.B. 32; 75 L.J.K.B. 104; 93 L.T. 772; 23 T.L.R. 97; 54 W.R. 107 and *In re Venkat Row*, 12 Ind. Cas. 293=10 M.L.T. 209=12 Cr. L.J. 525=21 M.L.J. 832, *Disc.*).

The power to commit for contempt indeed must exist somewhere in order to secure the administration of the law, but it can be safely restricted in the case of the lower Courts, because it is held and exercised by those to which they are subordinate.<sup>151</sup>

**Power of Subordinate Courts to commit for contempt.**

In a recent case from Madras, the District Judge, *suo motu*, and without any application by the plaintiffs, issued notice to the defendants to show cause why they should not be committed, and afterwards, also without any application by the plaintiffs, although they took part in the enquiry which led to the commitment, made an order committing the defendants to prison for three months for contempt. In making this order he purported to act as a Court of Record and to exercise a power inherent in the District Court as a Court of Record. A Court which is not a Court of Record has no inherent power to commit for contempt.<sup>153</sup>

*Held* that a District Court is not a Court of Record, and, as such, has no inherent power to commit for contempt. The jurisdiction which a District Court has to commit in case of disobedience is conferred by the Code of Civil Procedure, but the powers conferred by that section

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A number of cases have been decided in the Bombay and Calcutta High Courts with reference to what contempt of Court really is and with regard to the nature of their jurisdiction in the matter. Thus, in one case, *Martin v. Lawrence*, 4 C 655, it has been held that the jurisdiction of the High Court to imprison for contempt is a jurisdiction which it has inherited from the old Supreme Court and was conferred upon that Court by the Charters of the Crown, which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by the Civ. Pro. Code. To a similar effect is the case of *Navivahoo v. Narotamdas Candas*, 7 B. 5, and also the leading case of *Surendra Nath Banerjee v. The Chief Justice and Judges of the High Court*, 10 C. 109; and as mentioned in Mr. Mulla's Civ. Pro. Code (3rd Edition) the power to commit is "amongst the inherent powers" of the Court, a list of which is to be found at page 275 of that work. See *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630 (633)=11 Bom. L.R. 360=2 Ind. Cas. 485. But it must also be noted that "Inherent power must not be presumed to exist in the Court, and cannot be invoked except for the limited purpose of preserving and enforcing order, securing efficiency and preventing abuse of process in the exercise of a jurisdiction which the Court otherwise possesses." *Emperor v. Chinna Kaliappa Gounden*, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31=3 Cr. L.J. 274.

(152) *Hassonbhoy v. Cowasji Jehangir Jassawalla*, 7 B. 1 (4). (See Poth Pand. Lib. II, Tit. I, Art. 2; *R. v. Almon*, *Wilnot's Notes*, 256-9). As to the power of subordinate Courts to deal with their receivers see Civ. Pro. Code, 1908, O, XL, r. 4.

(153) *Kochappa v. Sachi Devi*, 26 M. 494. See the judgment of White, C.J., and Bhashyam Ayyangar, J.

(S. 493, Civ. Pro. Code, 1882) are only exercisable when the Court is set in motion by a party who deems himself aggrieved.<sup>154</sup>

When a receiver of a property has been appointed by an appellate Court pending an appeal to that Court, even when the appeal is no longer pending, he must be regarded as the receiver of the property, of which he has been put in possession, until he is finally discharged, and the appellate Court has jurisdiction to deal with matters relating to the receiver, including proceedings for contempt, until he has had his accounts passed by it.<sup>155</sup>

Jurisdiction of appellate Court in matters of contempt.

Who can punish for contempt—Only Judge of the Court appointing the receiver.

The offence of contempt is not to be deemed to be a violation of law, but merely a disregard of the mandate of a Court; hence it devolves upon the presiding officer of that Court to entertain the proceeding to punish the offender.<sup>156</sup>

It is to the Judge of that Court alone whose authority is disputed that the power to adjudge the act complained of as contempt belongs.<sup>157</sup>

(154) *Kochappa v. Sachi Devi*, 26 M. 494. As to disobedience of an order of injunction, see S. 493 of the Code of Civil Procedure, 1882 and O. XXXIX r. 2 cl. (3) of the present Code of Civil. Procedure (Act V of 1908); as to the power to punish receivers for acts of disobedience, see Civ. Pro. Code, 1908, O. XL, r. 4.

(155) *C.E. Grey v. Woogramohun Thakur*, 28 C. 790. Referring to the objection whether the appellate Court has got jurisdiction, their Lordships Amir Ali and Pratt, JJ., said:—"He also raised another what may be properly called a technical objection, viz., that this Court had no jurisdiction in the matter, and as the appeal was over and the case had been sent down to the Court below, the appointment of the receiver, who had been put in charge of the property, had come to an end. As regards this point, we are of opinion, that until the receiver is finally discharged, he must be regarded as the receiver of the property, of which he has been put in possession by the direction of this Court, and that this Court has ample jurisdiction, until he has had his accounts passed, to deal with the matter." *C.E. Grey v. Woogramohun Thakur*, 28 C. 790 (793).

(156) See Alderson on Receivers, ¶905, S. 216, p. 262; See also *Sheikh Jaharuddi v. Haricharan Podder*, 18 C.W.N. 470. In case of breach or disobedience of a temporary injunction, the Court which actually granted the injunction may punish the contempt under O. XXXIX, r. 2 (3). There is nothing in S. 24 of the Civ. Pro. Code or in Chap. IV of the Bengal Civil Courts Act authorising, either expressly or by necessary implication, a Court to which the suit may be transferred but which did not grant the injunction, to exercise the special jurisdiction under O. XXXIX, r. 2 (3). *Sheikh Jaharuddi v. Hari Charan Podder*, 18 C.W.N. 470. For power to punish in case of receivership proceedings, see Civ. Pro. Code, 1908, O. XL, r. 4.

(157) *Ibid.* "Contempt, in the legal acceptation of the term, primarily signifies disrespect to that which is entitled to legal regard. In its origin all legal contempt will be found to consist of an offence more or less direct against the Sovereign himself as the fountain-head of law and justice, or against his palace, where justice was administered. It is not, however, in its primary meaning of contempt of the King, his person, government, or prerogative, but in its secondary or derivative meaning of an offence against the Courts or persons to whom the judicial functions of the Crown are delegated that the word contempt is understood when used in the technical or legal expression *Contempt of Court*." 5 Vin. Abr. tit. "Contempt," p. 442, citing 24 Edw. III C. 33.

Contempt of Court, what is.

An attachment for contempt in such a case should be issued or withheld, sustained or modified or set aside, only by the direct

Contempt of Court (which has been irreverently termed "a legal thumbscrew") is so manifold in its aspect that it is difficult to lay down any exact definition of the offence. In Viner's Abridgment (tit. "Contempt," A1), it is defined or described to be a "disobedience to the Court, an opposing or a despising the authority, justice, or dignity thereof. It commonly consists in a party doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order, or decree of the Court" (See *per Williams, J.*, in *Miller v. Knox*, 1838, 4 Bing. N.C., at p. 588; 44 R.R. 771) Defined shortly (as it was by Sir William Blackstone), "Contempt is a disobedience to the rules, orders, or process of a Court, or against the king's prerogative." These short definitions (good so far as they go) are scarcely sufficient. Lord Chancellor Hardwicke, in the case of *the printer of the St. James's Evening Post* (1742, 2 Atk. p. 471; 26 E.R. 684), said: "There are three different sorts of contempt: one kind of contempt is *scandalising the Court itself*. There may be also a contempt of this Court in *abusing parties who are concerned in cases here*. There may be also a contempt of this Court in *prejudicing mankind against persons before the cause is heard*;" and he adds: "There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters." Ency. of Laws of England, 2nd Ed. Vol. III, p. 498.

Referring to the jurisdiction of the Court to punish on summary process, the Lord Russell, C.J. said:—"It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt; because, if it is not a case beyond reasonable doubt, the Courts will and ought to leave the Attorney-General to proceed by criminal information." (*Ibid.*)

Contempt of Court involves two ideas—*contempt of its power* and *contempt of its authority*—the word *power* involving the ability to enforce obedience to its orders, and the word *authority* its jurisdiction to declare the law and the rights of parties. Though every act of disobedience to the rules, orders, process, or dignity of a Court may technically be termed a *contempt*, the term is generally, or at least with greater propriety, applied to any disrespect or indignity offered to judges while sitting in judgment, or on account of their proceedings in their judicial capacity. Bell's Digest of the Law of Scotland, p. 224; *R. v. Almon*, 1765, Wilm. 256; *Miller v. Knox*, 4 Bing. N.C. 574; 44 R.R. 771.

Nature of contempt proceedings. Applications for contempt of Court ought not to be regarded as proceedings taken by one party to redress a wrong or obtain pecuniary consideration. Such proceedings are analogous to and in the nature of criminal informations, which therefore cannot be settled by the parties except with the sanction of the Court. *Rex v. Newton*, 1903, 67 J. P. 453.

"Every Court of record, as incident to it, may enjoin the people to keep silence, under a pain, and impose reasonable fines, not only on such as shall be convicted before them of any crime on a formal prosecution, but also on all such as shall be guilty of any contempt in the face of the Court, as by giving opprobrious language to the judge, or obstinately refusing to do their duty as officers of the Court, and may immediately order them into custody" (2 Bac. Abr., 7th Ed., p. 399). It is the undoubted right of a superior Court to commit for contempt; and there is no necessity to specify the particular matter which constitutes the contempt (*per Erle, C.J.*, in *Ex parte Fernandez*, 1861, 10 C. B.N.S., at p. 6, citing the case of *the Sheriff of Middlesex*, 1841, 11 Ad. & E. 273; 52 R.R. 337; 1840, 8 Dowl. P.C. 451, nom. *R. v. Evans*). But the practice now requires that the alleged offence should be specified. The usual criminal process to punish contempts was found to be cumbrous and slow, and therefore the Courts

order of the Court itself; and it is improper to make the issuing of such attachment dependent upon the judgment of a special

early assumed jurisdiction themselves to punish the offence summarily, *brevi manu* so that cases might be fairly heard, and the administration of justice not interfered with. A Court of justice, without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are intrusted to its care, would be an anomaly which could not be permitted to exist in any civilised community. "From the earliest period of our history this authority has been exercised. The year-books record instances of such commitments." Per Best, J., in *R. v. Davison*, 1821, 4 Barn. & Ald., at p. 340; 23 R.R. 303. But see also *Emperor v. Chinna*, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31=3 Cr. L.J. 274.

The power of summarily punishing for contempt has been inherent in all Courts of record from time immemorial (see the opinion of the Judges in *Miller v. Knox*, 1838, 4 Bing. N.C. 574, 44 R.R. 771; (*R. v. Almon*, 1765, Wilm. 243. Black. Com., bk. iv. c. 20, iii), and is coeval with their foundation and institution as part of the law of the land (Wilm., at p. 254). Without such protection, Courts of justice would soon lose their hold upon the public respect, and the maintenance of law and order would be rendered impossible. Hence it is that the summary power of punishing for contempt has been given to the Courts—"to keep a blaze of glory round, and to deter people from attempting to render them contemptible in the eyes of the public." Wilm. at p. 270.

Contempts committed before judges of the High Court in Chambers, and before the official referees, masters, registrars, or other officers of the High Court, to whom quasi-judicial functions are delegated (whose offices are part of the Court itself, or within the precincts of their chambers, are properly cognisable and punishable by the Court to which the judges or officers are attached, and not punishable by themselves *French v. French*, 1824, 1 Hog. 138; *Ex parte Burrows*, 1803, 8 Ves. 535; 32 E.R. 462; *Ex parte Wilton*, 1842, 1 Dowl. N.S. 805; 63 R.R. 850; *In re Johnson*, 1888, 20 Q.B.D. 63.

"Direct contempt is more or less spontaneous and aggressive on the part of the offender, and does not fall within the class of cases where the offence is constituted by disobedience to, or neglect of, some express direction of the Court. It is aimed either expressly against the dignity or authority of the Court itself, in the persons of its judges or officers, in such a manner as to amount to actual or constructive insult or resistance, or by acts tending to obstruct the course of justice. The contempt may be committed either by acts in the face of, or within the precincts of, the Court (*sedente curia*), or by acts done away from the Court. Of contempts committed in the face of the Court the most gross are those which involve actual or threatened violence to the person of the presiding judge, or the officers of the Court in attendance." *Ency. of the Laws of England*, 2nd Ed. Vol. III, p. 502.

"The indirect or consequential forms of contempt of Court arise when a judgment or order of the Court, after having been pronounced or made, has been disobeyed, and it becomes necessary to enforce such judgment or order (assuming it to be such as the law now permits to be enforced), by means of process, against the person of the party refusing or neglecting to obey or observe it. Such process is effected by the issue of a writ of attachment or by an order of committal.

Indirect contempts are occasioned by disregarding injunctions, or interfering with wards, receivers, and other persons entitled to the protection or acting under the authority of the Court. Any interference without the leave of the Court by third parties, with the possession of a receiver appointed by the High Court, is a contempt of Court, and that whether by any one claiming paramount to or under the right which the receiver was appointed to protect (*Kerr on Receivers*, 2nd Ed., pp. 124-126, and cases cited there; see also *Searle v. Choat*, 1884, 25 Ch. 723). The same rule extends to a manager of a business (*Helmore v. Smith*, (2), 1887, 35 Ch. D. 449; a sequestrator (*Angel v. Smith*, 1804, 9 Ves. 336; 32 E.R. 632;



commisisoner, appointed by the Court to take an account of the property involved.<sup>158</sup>

Power to punish cannot be delegated to ministerial officer of the Court.

The power to punish for contempt being plainly a judicial prerogative cannot be delegated to nor be exercised by, a ministerial officer of the Court. <sup>159</sup>

Nor can it be delegated to the receiver himself.

The receiver himself being merely the servant of the Court, cannot be given the power to adjudge a party in contempt. <sup>160</sup>

7 R.R. 214); an official liquidator (*In re Pound*, 1889, 42 Ch. D. 411); a receiver or trustee in bankruptcy; a sheriff after he has seized under a writ of execution (*Cooper v Asprey*, 1863, 32 L. J. Q. B. 209); a committee of a lunatic so found by inquisition; all of whom have been appointed by, and are therefore officers of, the Court." Ency. of the Laws of England, 2nd Ed. Vol. III, pp. 502-503.

"It is necessary for a person judged to be in contempt to clear or purge his contempt  
Purging Contempt. "Purgation is the purging or clearing a man's self of crime." (4 Black Com., 342). "An ordinary contempt in process, as it is a matter merely between the parties, may be cleared by the contemner doing the act, by the non-performance of which the contempt was incurred, and paying to the other party the costs occasioned by his contumacy." (Daniell's Ch. Pr., 7th Ed., p. 721). Where the contempt has arisen from doing an act contrary to an injunction not to do it, the contempt is cleared by an apology to the Court, and making reparation for the act improperly done, and paying the costs. Where the contempt is one of the Court itself, it is cleared by submission and apology to the Court, and payment of the costs. All contempts are also cleared after an order of the Court discharging the offender from further punishment, e.g., if, upon the application of the offender for release from custody, that release is ordered, he cannot be again punished for the same contempt; but terms for his release from custody may be imposed, which he must observe prior to obtaining such release." Ency. of the Laws of England, 2nd Ed. Vol. III, p. 504.

"If an order has been made in the exercise of the discretion of the Court, and some one who is oppressed, or thinks himself oppressed by that order, appeals, saying that the Court has exercised its discretion wrongly, that person, if he is in contempt, cannot be heard to say anything of the kind until he has purged his contempt. *Garstin v. Garstin*, Ss. 11 and 47 of the Salt Act (Bom. Act II of 1890) is an instance of that kind" Per Vaughan Williams, L.J., in *Gorden v. Gorden*, (1904) p. 163 cited in *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630 at p. 636 = 11 Bom. L.R. 360 = 2 Ind. Cas. 485.

The punishment for contempt of Court is limited now to fine or imprisonment; although in bad cases both are inflicted; but it is difficult to say what the Court considers a sufficient punishment, or a sufficient duration of imprisonment for a contempt of Court. All the facts and circumstances of the particular case, and the nature of the contempt, are taken into consideration; but the Court generally in practice leans to the side of mercy. The duration of the imprisonment should not be too long or severe." *In re Davies*, 1888, 21 Q.B., p. 236.

(158) *Geissee v. Beall*, 5 Wis. 224.

(159) *Ibid.*; See Alderson on Receivers, 1905, S. 216, p. 262.

(160) *Ibid.*

Nor has any Court other than the one appointing receiver power to commit for contempt.

So also, no Court other than the one who appointed the receiver, and whose order is disobeyed, has power to commit for contempt. <sup>161</sup>

The doctrine of comity between Courts will not permit a receiver of one Court to be attached and punished for contempt of another Court; but correction of such an offence should be made by application to the appointing Court. <sup>162</sup>

Who can apply to take proceedings for contempt.

There is nothing to prevent the receiver from himself applying for taking proceedings against a party for contempt. <sup>163</sup>

Although ordinarily the receiver does not himself apply for commencing contempt proceedings against any party and although generally speaking the action is taken by the parties beneficially interested in the properties, there is nothing to prohibit his doing so. It is unnecessary to refer to instances. On the original side of the High Court receivers have been known to have taken action themselves without the parties coming forward in the matter. <sup>164</sup>

Punishment in contempt cases.

So far as the question of punishment was concerned it is a matter entirely for the Court to determine. Regard must also be had to the conduct of the receiver himself <sup>165</sup> who institutes proceedings for contempt.

Practice and procedure in contempt cases — Guilt of the accused must be proved beyond reasonable doubt.

To sustain a committal for contempt on the ground of interference with property in possession of a receiver, the guilt of the accused must be shown beyond a reasonable doubt. <sup>166</sup>

(161) See *Alderson on Receivers*, 1905, S 216, p. 262.

(162) *Atwood v. State*, 59 Kans. 728, 54 Pac. R. 1057, 68 Am. St. R. 393

(163) *C. E. Grey v. Woogramohun Thakur*, 28 C. 790

(164) *C. E. Grey v. Woogramohun Thakur*, 8 2 C. 790 (793). (Per Amir Ali and Pratt, JJ.).

(165) *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (298 = 22 Ind. Cas. 417. As regards punishment, see *Price v. Hutchinson*, (1870) L.R. 9 Eq. 536; cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (293) = 22 Ind. Cas. 417; See also note (157), *supra*.

(166) *United States v. Jose*, 63 Fed. R. 951; See *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 = 22 Ind. Cas. 417 (Argument of counsel wherein certain fine observations are made on this point). Where an application is made for committal of a person to jail for disobedience of the Court's order, it is necessary not only that the order should be served upon the defaulting party personally, but the notice to commit should also be

"The Court is always jealous of the personal freedom of the subjects of the Crown, and where the liberty of the subject is in question, always requires the utmost strictness in procedure. Application affecting the liberty of the subject are matters *strictissimus juris*." <sup>167</sup>

"Attachment will not lie on a rule of Court unless for disobedience of some express direction." <sup>168</sup>

The order appointing the receiver ought to state distinctly, on the face of it, over what property the receiver is appointed <sup>169</sup>; or else refer

similarly served upon him. Service upon the party's attorneys is not sufficient. *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630=11 Bom. L.R. 360=2 Ind. Cas. 485. In the course of his judgment Russell said: "I can conceive no greater danger than if I were to hold that service of notice for committal of a person to jail was sufficient if it was served upon his attorneys alone. Further, another danger one has to bear in mind in this country is, that it is inconceivable that this Court would sanction notices being served upon attorneys of persons in a language which would probably not be understood by the latter; and I would be extremely sorry to commit a person for not obeying a notice of motion which was served upon his attorneys in a language which he did not understand and *non constat* that it was ever explained to him. And I think I am justified in holding that where an application is made it is necessary not only that the order should be served upon the defaulting party, but the notice to commit for disobedience thereof should also be served upon him. That has been the practice ever since the days of Lord Eldon and before that time." *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630 (635)=11 Bom. L.R. 360=2 Ind. Cas. 485. Committal being a serious matter, and seeing that committal is in the nature of a criminal proceeding, it is of the greatest possible importance that all applications to commit a person for contempt of this Court's order should be served personally. *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630 (634)=11 Bom. L.R. 360=2 Ind. Cas. 485. (Per Russell, J.) It was held by the Privy Council, in *In re Pollard*, (1868), L R 2 P.C 106 (which is referred to with approval in *Kashinath Vithal v. Daji Govind*, 7 B.H.C.R.A.C.J. 102), that in their Lordships' judgment, "no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him, and that in the present case their Lordships are not satisfied that a distinct charge of the offence was stated, with an offer to hear the answer thereto, before sentence was passed." When proceedings are taken for committal of a person for contempt of a Court's order, the Court is not obliged to stay those proceedings merely because an appeal has been filed from such order. *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630=11 Bom. L.R. 360=2 Ind. Cas. 485. (Per Russell, J.). See *In re Vallabhdas*, 27 B. 394—which is an insolvency case but the principle seems to be the same—where it was held (following *Ex parte Van Sandau*, (1844) 1 Phillips 415 at p. 457; that in all criminal cases it is necessary that there should be a charge, a finding and a conviction, as a foundation for the sentence and that as there was no charge, the order for imprisonment was wrongly made. *Bai Moolbai v. Chunilal Pitamber*, 33 B. 630 at pp. 633, 634=11 Bom. L.R. 360=2 Ind. Cas. 485. See also *The Governor of Bengal v. Moti Lal Ghosh*, 14 Cr. L.J. 321=17 C.W. N. 1253=20 Ind. Cas. 81=18 C.L.J. 452=41 C 173 In India no distinction has ever been drawn between "attachment" and "committal" as was the case in England before the passing of the Judicature Act. *Bai Moolbai v. Chunilal Pitamber*, 33 C. 630 (634)=11 Bom. L.R. 360=2 Ind. Cas. 485.

(167) Oswald on Contempt, p. 210, cited in argument in *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (291)=22 Ind. Cas. 417.

(168) *Deo. d. v. Earl of Cardigan*, (1850) 7 Com. Bench 794 cited in argument in the case of *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (291)=22 Ind. Cas. 417.

(169) *Crow v. Wood* 13 Beav. 271.

to the pleadings, or some document in the cause, which describes the property. <sup>170</sup>

In order to induce the Court to punish for contempt there must be something more than a mere technical contempt. <sup>170-a</sup>

The conduct of the party moving the Court to take contempt proceedings must be fair and above suspicion. Lord Mansfield in his judgment in the case, *Gregory v. Onslow*, said "that where there appear faults on both sides it would be improper to proceed on an attachment." <sup>171</sup>

Where there was conflict of evidence leaving it doubtful who has committed the act complained of, no order of committal should be made. <sup>172</sup>

Where a person takes forcible possession of estates, over which a receiver has been appointed, an order for his commitment will be made without an order *nisi* being previously obtained. <sup>173</sup>

Where adequate relief can be given to the receiver and the other aggrieved parties by way of pecuniary compensation, and where there is also some equity in favour of the offending party, the Court will content itself by imposing a fine to cover the damages instead of resorting to a committal. Thus, where the interference was not wilfully committed, or where the act complained of was done under a mistake of law, the Court, as a rule, will impose a fine sufficient to cover damages and costs, but will not commit. <sup>174</sup>

This extreme remedy of committal is not enforced where there has been an excusable mistake <sup>175</sup> or where an injunction will suffice, <sup>176</sup> and the offending party is often excused on payment of costs. <sup>177</sup>

Contempts are in the nature of offences, and, therefore, under S. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. <sup>178</sup> So also O. XLIII, r. 1 (s) of the Code of Civil Procedure

Where damages will be adequate relief Court will not take extreme step of committal.

Appeal in contempt cases.

(170) Seton on Judgments and Orders 774.

(170-a) *The Governor of Bengal v. Motilal Ghosh*, 14 Cr. L.J. 321=20 Ind. Cas. 81=17 C.W.N. 1253=18 C.L.J. 452=41 C. 173.

(171) *Gregory v. Onslow*, Lofts' Report, 35, cited in argument in the case of *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (291)=22 Ind. Cas. 417.

(172) *Kassinath Dass Khettry v. Subodra Dabi*, Unreported, 19th April 1883 cited in argument in the case of *P. Ray Chaudhuri v. Nolini Prokas Sen*, 18 C.W.N. 289 (291)=22 Ind. Cas. 417.

(173) *Broad v. Wickham*, 4 Sim. 511.

(174) *Noe v. Gibson*, 7 Paige. 513; *Lane v. Seerne*, 3 Giff. (Eng.) 629.

(175) *Ward v. Swift*, 6 Hare 309 (312).

(176) *Johnes v. Claughton*, (1822) Jac. 573.

(177) *Hawkins v. Gathercole*, (1852) 1 Drew. 12.

(178) *Navivahoo v. Narotamdas Candas*, 7 B. 5.



gives a right of appeal from orders made by Courts for the enforcement of the duties of their receivers.<sup>179</sup>

In dealing with an appeal from such an order the appellate Court will not go behind the order the disobedience to which constitutes the contempt.<sup>179-a</sup>

Contempt of  
order made in  
chambers.

An application may properly be made in Court to  
commit for contempt of an order made in chambers.  
<sup>179-b.</sup>

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(179) See Civil Procedure Code, O XL, r. 4, for the power of the Court to make orders for enforcing the duties of receivers; and see O XLIII, r. 1 (s) for the right to appeal therefrom.

(179-a) *Navivahoo v. Navotamdas Candas*, 7 B. 5.

(179-b) *Hassonbhoy v. Cowasji Jehangir Jassawalla*, 7 B. 1.



## CHAPTER XIII.

### RECEIVER'S REMUNERATION.

Receiver's remuneration—Provisions of the Civil Procedure Code regarding the same.

Jurisdiction of Court to allow remuneration to its receiver.

Amount of remuneration and manner of its payment largely left to the discretion of the Court appointing the receiver.

No definite rules as to how the remuneration of the receiver is to be fixed.—Court's discretion.

Certain broad principles indicated.

Points to be considered by the Court in fixing receiver's remuneration.

- (i) Court to consider the labour, responsibility and business capacity required of the receiver.
- (ii) Amount required to be paid to a person of ordinary ability competent for such duties to be considered.
- (iii) Evidence of competent witnesses as to what will be proper remuneration.
- (iv) Court also may act on its own knowledge of what may be proper remuneration.
- (v) Service actually rendered by the receiver is also matter for consideration.
- (vi) Effect on the estate also to be considered—Enhancing or reducing allowance.
- (vii) Conduct of receiver and the manner in which he attends to his business.
- (viii) Analogy to the case of trustees, guardians etc.
- (ix) Receiver's remuneration not dependent on the result of the litigation.
- (x) Amount allowed may vary from time to time as the receiver's trouble and responsibility are increased or lessened.
- (xi) Remuneration on very liberal scale allowed to receivers in case of receivership of peculiarly difficult business concerns—Example—Receivers of railroads.
- (xii) Doubt as to whether a larger or smaller sum is to be allowed—Decision to be in favour of the estate.
- (xiii) Where receiver acts in two capacities—What remuneration allowed.
- (xiv) Wages paid to agents doing the actual work of management is no ground to refuse or reduce remuneration of receiver.
- (xv) Additional allowance to receiver.
- (xvi) Additional compensation may be refused for extra services voluntarily rendered.
- (xvii) Agreement by parties regarding receivers' remuneration, effect of.
- (xviii) Agreement between creditor and debtor that the former should serve as receiver with remuneration.
- (xix) Compensation may be disallowed in certain cases.

Where appointment is found to have been improperly made—No ground for disallowing remuneration.

Where receiver agrees to serve without remuneration—None allowed to him.

Partner appointed as receiver not generally allowed any compensation.

Trustee appointed receiver is not allowed any remuneration.

Nor is a person having a lien or other interest on the suit property generally allowed any.

Example—Mortgagee-receiver.

Where estate is small and no difficulty in collection.

Receiver's compensation may be reduced by debtor's paying the money direct into Court.

Loss of right of objection to allowances—Estoppel.

Receiver's compensation how paid—It may be by way of a fixed salary, which may be enhanced if found necessary.

Fixing remuneration by a fixed percentage on the collections.

Remuneration when paid.

Remuneration—Out of what funds paid.

Estate over which he is appointed primarily liable—Receiver primarily to look to funds in his hands for remuneration.

Where the funds in receiver's hands are not sufficient to pay the receiver's remuneration—Procedure.

Liability of the fund and parties to pay receiver's remuneration—Question examined.

Where the receiver agreed to look only to the income of the estate for his remuneration.

Receiver entitled to a lien on funds in his hands for payment of his remuneration.

Exception to the above rule.

Receiver's compensation entitled to priority over other liens on the property.

**Receiver's remuneration—Provisions of the Civil Procedure Code regarding the same.**

WITH regard to the remuneration to be allowed to receivers, the Code of Civil Procedure enacts that "the Court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver."<sup>1</sup>

**Jurisdiction of Court to allow remuneration to its receiver.**

But apart from statutory authority, the power to fix a reasonable remuneration also follows from the very nature of the office of a receiver and the relationship he holds to the Court which appointed him. We have already seen that the receiver is the officer of the Court and derives his powers from the Court, and, by the nature of his position, is accountable to the Court; consequently, it is but reasonable that the Court should have the power to fix the remuneration due to its own officer, whom it clothes with certain rights and responsibilities.<sup>2</sup>

(1) See Civ. Pro. Code, 1908, O. XL, r. 2.

(2) See *Gardiner v. Feyler*, 3 Keyes, 505; Alderson on Receivers, 1905, pp. 848–849.

From the peculiar relationship existing between the Court and its receiver indicated above, it also follows that the amount of his remuneration, the manner of its payment, the time at which it is to be paid, and the fund out of which the payment is to be made, these and such other matters are left largely to the discretion of the Court which appointed him. The Court making the appointment has under its direction the acts and conduct of the receiver; it knows best how hard or how light his labours were; it knows best how well or how ill he discharged his duties. Consequently, such a Court is far more competent to form a fair and just estimate of what is reasonable remuneration than any appellate Court can be expected to be.<sup>3</sup>

Being largely a matter of the Court's discretion, no definite rules or fixed principles have been, or can be, laid down regulating the amount of remuneration to be allowed to the receiver in any particular case. Each case would have to be decided with reference to its own peculiar circumstances.<sup>4</sup> The amount of remuneration allowed is to be governed "by the reasonable necessities in that regard, if the receiver has properly discharged the duties which belong to him to perform, the grade of service required, the efficiency of that rendered, the benefit to the trust, the fidelity displayed, and by all the other circumstances throwing light on the question."<sup>4-a</sup>

There are, however, some useful remarks offered by Judges and Jurists,<sup>5</sup> which, though not binding precedents, may well serve as guiding principles in the exercise of the Courts' discretion. We shall proceed in the course of

(3) *Cake v. Woodbury*, 3 App. D.C. 60. The following observations of Brewer, J., may also be noted, though they go rather too far, being likely to be construed as an assertion of the discretionary rights of Courts and a resenting of any interference with the same by the superior Courts:—"As preliminary I remark, there has been no little implied criticism in the language of the appellate courts of the magnitude of the allowance made in foreclosure cases to counsel, receivers and others. We are admonished by utterances of the supreme Court to be cautious in this respect. I remark again that the question of allowance is a judicial one, and is left to the discretion of the Court. Is it discretionary only in the sense that there are no fixed rules to determine the proper allowance, and is not discretionary in the sense that the Courts are at liberty to give anything more than a fair and reasonable compensation." *Central Trust Co. v. Wabash, St. Louis and Pacific, R.R. Co.*, 32 Fed. R. 187.

(4) "It appears that there is no general rule which universally prevails with respect to the principles on which the allowance to be made to a receiver is fixed." See Daniell's *Chancery Practice*, Vol. II, 1901, p. 1441.

(4-a) Per Mookerjee, J., in *Mohini Mohan v. Baroda Kanta*, 12 Ind. Cas. 780 at pp. 787-788=14 C.L.J. 445.

(5) As to some observations regarding the amount of remuneration to be allowed to receivers, see *Ramji Ram v. Saligram*, 14 C.W.N. 248 (251)=5 Ind. Cas. 96. Unless it

this chapter to collect and examine some of the more important of the observations made by Judges in our country and in other countries. Though made by foreign tribunals, such of their observations as are in consonance with universal justice, and are based on the broad foundations of equity and good conscience would be followed by our Courts when similar circumstances arise.

is otherwise ordered as where he consents to act without salary, (See Kerr on Receivers pp. 210—218), a receiver will be allowed a salary, or have some other allowance made to him, for his care and pains in the execution of his duties. See Supreme Court Rules, O. L. r. 16. Remuneration for his services should be asked for at the time of his appointment, but may be allowed subsequently in a proper case, *Harris v. Sleep*, (1897) 2 Ch. 80. Under very special circumstances an order was made that the receiver should be allowed such salary as the Judge might, on the passing of each account, think reasonable. *Neave v. Douglas*, 26 L.J. Ch. 756. A receiver is entitled to be allowed all costs, charges and expenses and to be indemnified against all liabilities properly incurred in the protection and preservation of the property committed to his charge, or otherwise in the course of his duties, even though they result in loss. *Morison v. Morison*, (1855) 7 De G.M. & G. 214, C.A. The right to indemnity is not lost by the termination of his office. *Levy v. Davis*, (1900) W.N. 174. But if he suffers any loss to accrue which ought to have been prevented he is liable to pay them out of his own pocket. *Cook v. Sharman*, (1844) 8 I. Eq. R. 515. A receiver would not be allowed to make an extra charge for drawing up a scheme of the property and the holding of the tenants, this being work within the ordinary scope of his duties as receiver. *Potts v. Leighton*, (1808) 15 Ves. 273; see *Re Catlin*, (1854), 18 Beav. 508, 511.

A receiver who is also appointed manager of a business is allowed all the necessary expenses of carrying on the business with a view to advantageous sale, such as wages and salaries to workmen and servants. *Re Gomersall, Ex parte Gordon*, (1875), L.R. 20 Eq. 291. But the right to repayment is limited to the assets controlled by the Court; if these prove insufficient, the receiver can have no claim against the parties personally in the absence of express contract. *Boehm v. Goodall*, (1911) 1 Ch. 155. In the case of large business concerns, the order of appointment often authorises the engagement, at a salary, of sub-managers and agents for various purposes. 1 Seton, Judgments and Orders, 7th ed., pp. 731, 732. A receiver may be ordered to pay the costs of any application to the court rendered necessary by his own default (*Walsh v. Walsh*, 1839, 1 I. Eq. R. 209); but it would appear that if a receiver who has been guilty of default can show that he acted at the instance of parties interested in the property, he may be allowed to charge such parties in account with any costs that have been thrown on him personally in consequence of such default. *Bertie v. Abingdon (Lord)*, (1845), 8 Beav. 60. A receiver is entitled to the costs of and incidental to the passing of his accounts, unless he is in default and has accounted only under stress of an order for attachment. *Trapaud v. Cornuck*, (1825), 1 Hog. 245. And, if no objection is taken at the time to want of punctuality in accounting, such costs are not afterwards disallowed unless in very special circumstances. *Ward v. Swift*, (1848), 8 Hare, 139. He is not, however, allowed the expenses of finding security or the premiums payable to a guarantee society, unless he is acting without salary. *Harris v. Sleep*, (1897), 2 Ch. 80, C.A. If he fails to complete his security he must, as a rule, bear personally the costs of the proceedings necessary to set aside his appointment and obtain the appointment of a substitute. *Hunter v. Pring*, (1845), 8 I. Eq. R. 102. A receiver who applies for his own discharge is not allowed the costs of the application (*Cox v. M'Namara*, 1847, 11 I. Eq. R. 356) unless there is very good reason for it (*Richardson v. Ward*, (1822), Madd. & G. 266), nor is he allowed the costs incidental to his own removal and the appointment of a new receiver, unless by consent or after unusually long and faithful service. *Cox v. M'Namara*, (1847), 11 I. Eq. R. 356. A receiver is allowed his costs of any action brought by direction of the court, even though it is dismissed with costs; and, if the assets prove insufficient to pay the costs

It is one of the well established rules, which applies not only in the case of receivership, but to all cases where services are to be paid for, that the compensation awarded to the person rendering the services should correspond with "the degree of labour, business capacity, integrity and responsibility required in the management of the affairs entrusted to him."<sup>6</sup>

Points to be considered by the Court in fixing receiver's remuneration.

(i) Court to consider the labour, responsibility and business capacity required of the receiver.

It has been said that reasonable compensation is to be fixed "by considering the responsibility assumed, the skill and labour expended, and the rate of pay usually allowed for similar work."<sup>7</sup>

The amount of compensation due to a receiver, should be considered not with reference to the value of his services in large and more important affairs, but their value in connection with the particular business of which he has charge.<sup>8</sup>

It is proper for the Court to consider the qualifications of the person appointed receiver, the amount of time which a proper performance of the duties of the position will require, and the manner in which the service is performed.<sup>9</sup>

of the successful defendant as well as those of the receiver, priority will be given to the receiver's claim. *Ramsay v. Simpson*, (1899), 1 I. R. 194, C. A. The costs of initiating or defending legal proceedings without the leave of the Court are not, as a rule, allowed (*Swaby v. Dickon*, (1833), 5 Sim. 629); but if the defence of an action is undertaken in the interests of and for the protection of the estate and proves successful, the receiver is generally indemnified against his costs, notwithstanding that he acted without the leave of the Court. (*Courand v. Hammer*, 1846, 9 Beav. 3). If proceedings initiated by a receiver have to be abandoned owing to an error in the form of procedure the costs are disallowed (*Re Montgomery*, 1828, 1 Mol. 419), and so also are the costs of an application by a receiver for leave to commence proceedings on behalf of the plaintiff against one of the defendants to an action, such proceedings being outside the scope of his duties as receiver. (*Comyn v. Smith*, (1823), 1 Hog. 81; see *Murtin v. Walker's Executors*, (1837), Sau. & Sc. 139.) Application to the Court should be made by the parties to the action and not by the receiver personally, (See *Wilkinson v. Gangadhar Sirkar*, 6 B.L.R. 486) and the costs of any application by the receiver in his own name may be disallowed unless he shows that the parties have refused or neglected to act, (*Re Sacker, Ex parte Sacker*, 1888, 22 Q.B.D. 179, C.A., per Fry, L.J., at p. 185), especially if the application is made in the interests of one party against another in a disputed question of right. (*Comyn v. Smith*, (1823), 1 Hog. 81. All parties interested in the property over which the receiver is appointed are entitled to attend the passing of the receiver's accounts (*Day v. Croft*, 1851, 14 Beav. 29), but they attend at their own expense, unless they have been directed by the judge to attend (R.S.C. Ord. LV, r. 40) or have obtained special leave to attend at the expense of the estate, (R.S.C. rr. 42, 43). If the judge decides that their attendance has been necessary, their costs are made costs in the cause; they will not be included in the receiver's accounts unless an order as to payment of costs of the action has been made, which would justify their inclusion. Daniell's Chancery Practice, 7th ed., vol. II, p. 1447.

(6) *French v. Gifford*, 31 Iowa, 428.

(7) *Bank Comrs. v. Franklin Institute for Savings*, 11 R. I. 557.

(8) *Starns Paint Mfg. Co. v. Comstock*, 121 Iowa, 430.

(9) *McArthur v. Montclair Ry. Co.*, 27 N. J. Eq. 77.



The receiver appointed may be a man of extraordinary capacity ; but no special allowance is to be made on account of such extraordinary ability. The Court must have regard to what would be the reasonable remuneration for such services if the same be " required of and rendered by a person of ordinary ability, and competent for such duties and services."<sup>10</sup>

(ii) Amount required to be paid to a person of ordinary ability competent for such duties to be considered.

In an American case where a similar question was raised the Court said " There can be no reasonable grounds to doubt that the receiver in this case, or some other person possessing equal qualifications, could have been employed by private contract to perform the services rendered in this case for half the amount allowed by the referee. This, it seems to us, is the fair and reasonable test by which the amount of compensation to be allowed should be determined."<sup>11</sup>

But care should also be taken that the amount of compensation is not made purely a matter of bidding or competition. What is the least expense with which the estate can be managed is not the sole consideration for the Court. Hence it has been laid down that " the compensation, like the appointment, is determined by the Court in the exercise of its judicial discretion, and not by the result of bidding, even among persons every way competent to discharge the duties of the office. In allowing the compensation, no written rule of judicial requirement is imposed upon the Court. The compensation must be reasonable in view of the facts of any case, and in view of the duties and responsibilities of the receiver. But what means or in what manner the Court will arrive at its determination as to what sum is reasonable, no presumptive rule is to be found, and the Court should have the largest liberty of inquiry and ascertainment before actually deciding. The reasonableness of the compensation is a matter exclusively for the determination of the Court ; the manner and means of exercising that discretion in endeavouring to ascertain what is reasonable, must be left largely to such Court also."<sup>12</sup>

" The amount of his compensation does not depend upon his wealth or social standing or the demands made upon his time by private business ; nor yet upon the estimate that gentlemen who are themselves in receipt of an ample income may put upon their services from the standpoint they occupy. The considerations that should prevail with the Court are the time and labour needed, not necessarily the time and

(10) *Grant v. Bryant*, 101 Mass. 567.

(11) *French v. Gifford*, 31 Iowa. 148.

(12) See the judgment in *Lichtenstein v. Dial*, 68 Miss. 54, 8 So. R. 272 ; see also the judgment of Bradley J. in *Cowdrey v. The Rail Road Co.*, 1 Wood. 331.

labour expended, in the proper performance of the duties imposed; the fair value of such time and labor, measured by the common business standards; the degree of activity, integrity and dispatch with which the work of the receiver is conducted. When there has been delay in closing up his accounts, in attention to his trust, use of the trust fund by the receiver in his own private business, or a want, in any particular, of the good faith and integrity that the Court of equity usually requires of all its agents and officers, the compensation may be reduced below the ordinary standard, or denied altogether, as justice and right may require."<sup>13</sup>

In the matter of compensation, the standard to be followed should be that of public not private service.<sup>14</sup>

(iii) Evidence of competent witnesses as to what will be proper remuneration.

The evidence of competent and capable witnesses as to what would be the proper compensation in any particular case may also be taken by the Court for its guidance.<sup>15</sup>

In an American case the opinion was expressed that the Court fixing the amount of compensation in total disregard of such evidence would be an arbitrary exercise of its discretion which the appellate Court would be justified in setting aside or altering.<sup>16</sup>

But in fixing the compensation due to the receiver, the Court is not confined to evidence formally given before it, but may act on its own knowledge and judgment as to the reasonableness of the amount, in connection with what has been done by the receiver in the discharge of his duties.<sup>17</sup>

(iv) Court also may act on its own knowledge of what may be proper remuneration.

The Court should also take into its consideration what services were actually rendered by the receiver; and if need be, it can institute an enquiry with regard to such services. Thus, where a receiver presented a large bill and claimed to have rendered great many services extending over a considerable length of time, the correctness of which the Court had no means of ascertaining, it was held that the Court was right in referring the matter for determining whether the alleged services were

(v) Service actually rendered by the receiver is also matter for consideration.

(13) See the judgment in *Schwartz v. Keystone Oil Co.*, 153 Pa. St. 283, 25 Atl. R. 1018.

(14) *Speiser v. Merchants Exchange Bank*, 110 Was. 506.

(15) See *State etc. v. Green County Bank*, 69 Mo. App. 536.

(16) *Ibid.*

(17) *State v. Nebraska, S. & E. Bank*, 61 Neb. 496.

actually rendered and whether the remuneration claimed was just and proper.<sup>18</sup>

In such a case notice would be given to the parties in interest and their objection if any would be heard.<sup>19</sup>

If there be any special difficulty in collecting the rents, on account of the sums being extremely small or of the payments being very frequent, as weekly payments, then the allowance may be increased; on the other hand, if there should be very great facility in receiving the rents, it may be diminished, or a stated salary may be allowed where the rental is very considerable.<sup>20</sup>

If the receiver is prudent in his management, and realizes for the estate a large sum, the allowance may be increased; but if, on the other hand, the amount coming into his hands is small, although not due to any act or omission on his part, where great loss will in any event inevitably fall on creditors who would have to be paid out of the funds, the Court may well reduce the allowance. In measuring the value of the receiver's services the Court should consider not only the work done, but the results accomplished, and the effect it would have on the creditors entitled to be paid from the estate.<sup>21</sup>

It has also been laid down that in fixing the amount of the receiver's compensation, the Court should have regard not only to the fair value of the time and labour required in the performance of his duties as measured by ordinary business standards, but due regard should also be had to his conduct as receiver, to the manner in which he attended to his business and to the degree of activity, integrity and dispatch with which the work has been performed.<sup>22</sup>

The remuneration allowed to receivers, especially in cases not attended with any peculiar difficulty requiring any special capacity and special compensation, has been held to be regulated by analogy as near as possible to the rate of commissions allowed to guardians and trustees for the performance of similar services.<sup>23</sup>

(18) *People v. Knickerbrocker Life Insurance Co.*, 31 Hun. 622.

(19) *Ibid.*

(20) *Day v. Croft*, 2 Beav. 488; see also *In the goods of Luchminarain Bogla*, Calcutta High Court, 26th March 1901, cited in Woodroffe on Receivers, 2nd Ed., p. 268, Note (1).

(21) *Scherley v. Mattingly*, 51 S.W.R. 189.

(22) *Schwartz v. Keystone Oil Co.*, 153 Pa. St. 283.

(23) *Tome v. King*, 64 Md. 166. See also High on Receivers, 4th Ed., S. 785, p. 924.

A trustee under a will, when appointed receiver of the estate, may be allowed compensation as receiver.<sup>24</sup>

Inasmuch as the receiver is an officer of the Court and, as such, takes possession of the property, the right to which is involved in dispute, and holds it by order of the Court, for the benefit of the party who shall ultimately be found to be entitled to it, his compensation cannot be made to depend on the result of the litigation, but he is entitled to have his fees paid out of the funds in his hands, no matter to which of the parties to the action possession is finally adjudged.<sup>25</sup>

As the appointment is made for the benefit of all, the expenses should be shared by all.<sup>26</sup>

A receiver should not be required to run the hazard on the result of the litigation in the matter of his fees, and though the appointment be erroneous, the Court may award the fees and expenses of the receivership and charge them against the assets in the possession of the receiver. A Court may take care of its own officers even when the result is a hardship to one of the parties, and may require the plaintiff, who is unsuccessful, to pay the receiver's fees and other expenses attending the receivership.<sup>27</sup>

The amount allowed to a receiver on account of his services may vary from time to time. Thus the amount allowed for his services in one year is not necessarily a precedent for a subsequent year. "In proportion as his responsibility and the degree of skill required of him is lightened or increased, should his compensation be decreased or enhanced."<sup>28</sup>

Where a person is appointed a receiver of a peculiarly different business concern, which involves more than ordinary care and responsibility and which would call forth the exercise of business capacity of a superior order, the Court would allow remuneration on a much more liberal scale than it would do in other cases. Thus a receiver over a railway company entrusted with the operation and management of the road may be allowed more liberal compensation than in ordinary cases.<sup>29</sup>

(24) *In re Bignell*, (1892) 1 Ch. 59.

(25) *Hopfensack v. Hopfensack*, 61 How. Pr. 498.

(26) *Johnson v. Garrett*, 23 Minn. 565.

(27) *Cutler v. Pollock*, 7 N.D. 631, 76 N.W.R. 235.

(28) *Special Bank Commissioners v. Franklin Institution*, 11 R.I. 557.

(29) See *Chowdrey v. The Rail Road Co.*, 1 Wood 331.



"The reason of this rule is that the duties and responsibilities of such a receiver are much greater than those of an ordinary receiver appointed merely to take and hold money. In such cases, it is not regarded as a proper test to enquire what another competent person would have been willing to do the work for, since the office is not put up to auction. The Court selects a person whom it regards competent and trustworthy and the amount of compensation is fixed according to the duties and responsibilities of the situation. 30

In determining the compensation to be paid to receivers of big and important mercantile concerns (as a railway company) it is proper to consider (a) their fitness for the duties, (b) their business and financial experience, (c) the time they devote to their duties, (d) and the diligence and thoroughness displayed by them in the discharge of their duties. 31

(xii) Doubt as to whether a larger or smaller sum is to be allowed—Decision to be in favor of the estate.

In case of any doubt as to where a larger or smaller remuneration is to be allowed to the receiver in any particular case, the better course would be to decide the question in favour of the estate and not in favor of the receiver. 32

(xiii) Where receiver acts in two capacities—What remuneration allowed.

In some cases, it so happens that a receiver dealing with the property which is the subject of a pending litigation acts in two or more capacities. In such cases, if he be allowed reasonable compensation for services rendered in one capacity he will not be allowed any compensation or be allowed only nominal remuneration for the same services rendered in the other capacity or capacities. 33

Thus, if a receiver be appointed to take possession of property in the place of executors under a will and he acted jointly with one of the executors, he will be allowed only the compensation usually allowed to the executor. No special allowance will be made to him for his services as receiver. 34

(xiv) Wages paid to agents doing the actual work of management is no ground to refuse or reduce remuneration of receiver.

The fact that the actual work of management of the property is performed by others is no ground to deprive the receiver of his remuneration. 35

(30) Per Bradley, J., in *Chowdrey v. The Rail Road Co.*, 1 Wood. 331.

(31) *Mc Arthur v. Montclair, R. Co.*, 27 N.J. Eq. 77.

(32) *Speiser v. Merchants Exchange Bank*, 110 Wis., 506.

(33) *Martin v. Martin* (Sup. Ct. Oregon, 1886), 12 Pac. R. 234.

(34) *Holcombe v. Executors of Holcombe*, 13 N.J. Eq. 417.

(35) *Price v. White*, Bail. Eq. 240.



Thus, in the case of farms or plantations or estates lying at a distance which are placed in the receiver's custody, it is usual to leave the actual management in the hands of agents and servants employed under the general or special orders of the Court. In some cases such employment is necessitated from the nature of the business or the necessities of the case. In such cases the receiver appoints the agent and is responsible for the acts of the agent. The fact that wages are paid to such agents is no ground to refuse remuneration to the receiver.<sup>36</sup>

Very often it happens that the amount of compensation to be paid to the receiver is fixed in advance either in the form of  
(xv) Additional allowance to receiver. a definite sum or a stated salary per month or a certain percentage on the collections. When the Court takes the final account and is about to pay the receiver his remuneration, it may appear to the Court that the amount originally fixed was not commensurate with the services rendered. In such cases it is open to the Court to grant the receiver an additional allowance.<sup>37</sup>

Thus a receiver may be entitled to allowances beyond his salary for any extraordinary trouble or expense he may have been put to in the performance of his duties, or in prosecuting or defending any legal proceedings brought by or against him.<sup>38</sup>

If, however, such allowances are objected to, they will not, in general, be sanctioned, unless the expenses have been incurred with the approbation of the Court or Judge.<sup>39</sup>

When it can be shown that it would be inequitable for the parties to take the benefit of the exertions of the receiver without defraying the expenses which had attended them, it seems that the expenses may be allowed although no previous authority for incurring them had been given.<sup>40</sup>

In a case in Ireland, where the receiver of a lunatic's estate had instituted proceedings which, being wrong in form, he abandoned, and

(36) *Price v White*, Bail. Eq. 240.

(37) *Farmer's Loan & Trust Co. v. Central R. R. Co.*, 8 Fed. R. 60. As to the principles and practice of the Court with respect to allowances made to receivers for extraordinary services, see *Malcolm v. O'Callaghan*, 3 Myl. & C. 52; 1 Jur. 838. In a recent case the Court fixed the amount of remuneration to be paid to a receiver. Subsequently, on the representation of the receiver, the amount of the remuneration was raised: *Held*, that the second order must be taken to have been made under O. XL, r. 2, and not under cl. (d) of r. 1 of the Order, and that, therefore, it was not appealable under O. XLIII, r. 1 cl. (s). *Thomas Cunliff Tweedie v. Pokea Khatun*, 22 Ind. Cas. 352.

(38) *Potts v. Leighton*, 15 Ves. 276; *Courand v. Hanmer*, 9 Beav. 3.

(39) *Re Ormsby*, 1 B. & B. 189; *Swaby v. Dickon*, 5 Sim. 69.

(40) *Malcolm v. O'Callaghan*, 3 M. & C. 52, 58, 63.

afterwards took other proper proceedings which were successful for the estate, the Court refused to allow him the costs of the abandoned proceedings, although it was found that the receiver had acted *bona fide*, and ought to be allowed the costs.<sup>41</sup>

A receiver is not entitled to be reimbursed the expenses of journeys to and residence in a foreign country, for the purpose of prosecuting proceedings for the recovery of property belonging to the estate, before the tribunals of that country, unless he has the express authority of the Court for such journeys.<sup>42</sup> As a general rule extra services voluntarily rendered will not give any claim for remuneration.<sup>43</sup>

(xv-a) Extra work. A person who agrees to act as receiver and manager without salary, and does not at the time of his appointment obtain the sanction of the Court to his receipt of wages for extra work done for the business, runs a risk of losing such wages altogether; but the Court will, in a proper case, make allowances for extraordinary services.<sup>44</sup>

(xvi) Additional compensation may be refused for extra services voluntarily rendered. As a general rule, Courts will not allow any additional remuneration for extra services voluntarily rendered.<sup>45</sup>

Thus, in a case where a receiver was appointed over the estate of a minor, and he attended to a survey of the minor's estate, and then applied to the Court for an extra allowance upon the ground that by his exertions the estate had been considerably increased, the Court said: "This has been entirely a voluntary act, there was no order for the receiver to attend on the survey; he did not pay the expenses attending it; they were paid out of the minor's estate, and I do not see how I can allow him anything for his extraordinary trouble."<sup>46</sup>

(xvii) Agreement by parties regarding receiver's remuneration, effect of. An agreement by the receiver with one of the parties to the suit is held contrary to public policy and consequently void.<sup>47</sup>

The reason of the rule is that such an agreement may offer a temptation to the receiver to sacrifice the interests of one party for the benefit of the other. A promise to pay the salary of a receiver without leave

(41) *Re Montgomery*, 1 Moll. 419.

(42) *Malcolm v. O'Callaghan*, 3 Myl. & C. 52; 1 Jur. 838.

(43) *In re Ormsby*, 1 Ball & B. 189.

(44) *Harris v. Sleep*, 66 L.J., Ch. 596; (1897) 2 Ch. 80; 76 L.T. 670; 45 W.R. 680.

(45) *In re Ormsby*, 1 Ball & B. 189.

(46) *Ibid.*

(47) See *Prokash Chandra Sarkar v. E. E. Adlam*, 30 C. 696.

from the Court, even if unconditional, being in contravention of the law, is not binding on the promisor.<sup>48</sup>

A receiver being an officer of the Court, the Court only is to determine his fees or remuneration; and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.<sup>49</sup>

An agreement between a receiver and a party without the knowledge of the Court would be a gross contempt of Court.<sup>50</sup>

(xviii) Agreement between creditor and debtor that the former should serve as receiver without remuneration

But an agreement between a creditor and his debtor by which the former agrees to serve as receiver without compensation provided the debtor will make no objection to his appointment is valid and enforceable.<sup>51</sup>

Where the receiver has neglected his duties, or has not acted in good faith in the conduct of his duties, or otherwise committed a breach of his obligations, the Court may reduce his remuneration or disallow it altogether.<sup>52</sup>

(xix) Compensation may be disallowed in certain cases.

So also gross negligence or wilful misconduct would be good ground for disallowing remuneration.<sup>53</sup>

Similarly patent incapacity and lack of appreciation of his duties may also disentitle the receiver to any remuneration.<sup>54</sup>

On the same principle the Court may refuse remuneration to a receiver, who instead of himself attending to the duties of his office as he is bound to do, employs others to do his work, and himself attends to some minor duties.<sup>55</sup>

The compensation originally fixed may also be reduced for delay in submitting accounts, inattention to his duties as receiver, and personal use of funds of the receivership.<sup>56</sup>

Similarly no compensation will be allowed for work performed by the receiver after the reversal of the order of appointment and his

(48) *Prokash Chandra Sirkar v. E. E. Adlam*, 30 C. 696.

(49) *Prokash Chandra Sirkar v. E. E. Adlam*, 30 C. 696; (*Manick Lall v. Surrutt Coomaree*, 22 C. 648, R.)

(50) *Manick Lall Seal v. Surrutt Coomaree Dassee*, 22 C. 648; followed in *Prokash Chandra Sarkar v. Adlam*, 30 C. 696 (698).

(51) *Polk v. Johnson*, 160 Ind. 292.

(52) *U. S. National Bank v. National Bank of Guthrie*, 6 Oke. 163.

(53) *Ibid.*

(54) *In re Sheets Lumber Co.*, 52 La. Ann. 1337, 27 So. R. 809.

(55) *Wilkinson v. Washington*, 102 Fed. R. 28.

(56) *Schwartz v. Keystone Oil Co.*, 153 Pa. St. 283.

knowledge of such reversal.<sup>57</sup> The proper course for the receiver to adopt in such a case is, as soon as he comes to know of the reversal of the order, to present his final accounts and ask for his discharge.<sup>58</sup>

A receiver who does not pass his accounts regularly may not be allowed compensation.<sup>59</sup>

A receiver, who neglected to pass his accounts according to the order of the Court, but brought in on the same day the account for four years, was disallowed his remuneration, and was also charged interest upon the balances during the time they were in his hands.<sup>60</sup>

When a receiver was discharged, owing to gross dereliction of duty, the order disallowed his fees on all accounts not passed within the prescribed time, and directed him to pay interest on the balance from time to time in his hands, and to pay the costs of the motion to discharge him, of his own discharge, and of appointing his successor.<sup>61</sup>

A receiver who accounts under an order for an attachment against him, must pay the costs of passing his account.<sup>62</sup>

Where a receiver has not accounted within the proper time, his fees may, nevertheless, be allowed to him upon the consent of the parties in the cause, if they be competent to consent; but where some of them are minors, this cannot be done.<sup>63</sup>

**Where appointment is found to have been improperly made—No ground for disallowing remuneration.**

The fact that the Court finds that the appointment of the receiver was improper, and, on that ground, vacates the order of appointment, that is no reason why the receiver is not to receive compensation for services already rendered by him.<sup>64</sup>

**Where receiver agrees to serve without remuneration—None allowed to him.**

Where the receiver agreed to serve without remuneration no allowance would generally be made to him.<sup>65</sup>

(57) *Hickey v. Parrot*, 32 Mont. 143.

(58) *Ibid.*

(59) *White v. Lincoln (Lady)*, 8 Ves. 371; 7 R. R. 71.

(60) *Bristowe v. Needham*, 9 Jur. (N.S.) 1168; 8 L.T. 652; 11 W.R. 926.

(61) *St. George's Estate, In re*, 19 L.R., Ir. 566.

(62) *Trapaud v. Cormick*, 1 Hog. 245.

(63) *Dease v. O'Reilly*, 2 Con. & L. 441; 4 Dr. & War. 284.

(64) *Louisville, etc. v. Southworth*, 38 Ill. App. 225. In a case where a receiver was appointed by consent of parties, a party to the suit was held not entitled to object to the receiver being paid his compensation on the ground that his original appointment was improper. *Kimmerle v. Dowagiae Mfg. Co.*, 105 Mich. 640; 63 N.W. 529. See also *Prem Lall v. Sumbhoonath*, 22 C. 960.

(65) See *Steel v. Holladay*, 19 Oreg. 517; 25 Pac. R. 77.

Thus, in a case where the parties asked for the appointment of a particular person as receiver, and represented to the Court that the said person was also interested in the estate, and that his appointment would save an expense to the estate, as he would serve without compensation, and he also agreed to serve without pay, and the appointment was made on that condition, it was held that no compensation would be allowed to the receiver.<sup>66</sup>

Partner appointed receiver not generally allowed any compensation.

When a partner is appointed receiver of the partnership estate, Courts will not generally allow him any remuneration.<sup>67</sup>

Trustee appointed receiver not allowed any remuneration.

Similarly a trustee appointed receiver of the estate of which he is the trustee may not, in general, be allowed any remuneration. The relation of trustee and *cestui que trust* excludes any idea of remuneration except by express antecedent contract.<sup>68</sup>

A trustee appointed upon his own undertaking in a suit to act as receiver of the trust property is not under ordinary circumstances entitled to a salary as receiver.<sup>69</sup>

Though a general, it is not an inflexible, rule that no remuneration will be allowed to a trustee appointed by the Court receiver of the trust estate. The Court has a discretion to grant or refuse it.<sup>70</sup>

The fact that nothing is said about remuneration in the judgment appointing a receiver does not preclude the Court from subsequently allowing remuneration.<sup>71</sup>

(66) *Steel v. Holladay*, 19 Oreg. 517; 25 Pac. R. 77.

(67) *Burke v. Burke*, Flan. & K. 89. Thus, when a surviving partner is made a receiver of the firm at his own request he is not entitled to compensation for his services in the absence of any stipulation to that effect, since his duties as receiver, in such case, are no more than would have been his duties as surviving partner, for which he would not be entitled to any compensation in the absence of a contract to that effect. *Berry v. Jones*, 11 Heisk 206. A receiver and manager appointed by partners to wind up their business is in the absence of express stipulation entitled to a *quantum meruit* remuneration, not to remuneration according to the scale laid down for official receivers *Day v. Croft*, 2 Beav. 488.

(68) *Re Accles, Ltd.*, *Hodgson v. Accles, Ltd.*, (1902) W.N. 164; see *Marshall v. Holloway*, (1820) 2 Swan, 432, 453; *Re Freeman's Settlement Trusts* (1887), 37 Ch. D. 148.

(69) *Pilkington v. Baker, British Mutual Investment Co. v. Pilkington*, 24 W.R. 234 (Eng.).

(70) *Bignell, In re, Bignell v. Chapman*, 61 L.J., Ch. 334; (1892) 1 Ch. 59, 66 L.T. 36; 40 W.R. 305 (Eng.).

(71) *Bignell, In re, Bignell v. Chapman*, 61 L.J. Ch. 334; (1892) 1 Ch. 59; 66 L.T. 36; 40 W.R. 305 (Eng.).



Nor is a person having a lien or other interest on the suit property generally allowed any.

So, also, when a person claiming a lien upon, or other interest in, the property is appointed receiver, it will generally be made on the condition of his not claiming any remuneration. In such cases he will not be entitled as of right to any compensation.<sup>72</sup>

Example—Mortgagee-receiver.

Thus, for example, a legal mortgagee in possession who is himself appointed receiver is not allowed remuneration.<sup>73</sup>

But in a proper case he might be allowed the costs of employing an agent for collection of rents.<sup>74</sup>

Where estate is small and no difficulty in collection.

Where the property to be received is of small amount and involves no difficulty in collection, the Court has sometimes refused to allow remuneration.<sup>75</sup>

Receiver's compensation may be reduced by debtor's paying the money direct into Court.

Although a receiver has been appointed, persons indebted to the estate may pay the same into Court. The order of appointment does not necessarily vest the receiver with the exclusive right to collect the entire debts due to the estate. Where the debtors pay the money direct into Court the result, as far as the receiver is concerned, may be to deprive him of a portion of his remuneration, especially if the remuneration be fixed, with reference to the amounts collected by him.<sup>76</sup>

Loss of right of objection to allowances—Estoppel.

Plaintiffs who are parties to orders authorising a receiver to do various acts as receiver are estopped from objecting afterwards to the allowance of his costs in respect of them.<sup>77</sup>

Receiver's compensation how paid—It may be by way of a fixed salary.

It is competent to the Court, if it should so deem fit, to fix the receiver's compensation by way of a fixed salary.<sup>78</sup>

(72) *Steel v. Holladay*, 19 Oreg. 517; 25 Pac. R. 77. As a general rule, where a party interested is appointed receiver, he is not allowed a salary, (*A. - G. v. Gee*, (1813) 2 Ves. & B. 208), unless by consent. *Fingal (Earl) v. Blake*, (1829) 2 Mol. 50.

(73) *Re Prytherch; Prytherch v. Williams*, (1889), 42 Ch. D. 590, 601.

(74) *Bonithon v. Hocknore*, (1685) 1 Vern. 316.

(75) *Marr v. Littlewood*, (1837) 2 My. & Cr. 454, 458.

(76) *Haigh v. Grattan*, 1 Beav. 201.

(77) *Taylor v. Taylor*, (1881) 6 P.D. 29.

(78) *Farmer's Loan & Trust Co. v. Central Railroad*, 8 Fed. 60. According to the English practice the nature and amount of the remuneration is usually determined in

But if the Court find that his duties have entailed on the receiver labours more arduous and onerous than were originally expected either by the receiver or by the Court, the Court has power to increase the salary or to grant him an allowance in addition to his salary.<sup>79</sup>

Which may be enhanced if found necessary.

No doubt, it is not proper for the Court to make a general rule laying down a fixed and invariable percentage of remuneration on the sums collected to be applicable to all cases irrespective of the labour involved in the collections and other duties of the receivership.<sup>80</sup>

Fixing remuneration by a fixed percentage on the collections.

But, in the absence of positive proof as to the amount of work done or labour involved in the discharge of the duties of the receiver, the Court may properly fix the receiver's remuneration at a certain percentage on the amounts collected or expended by the receiver.<sup>81</sup>

As a matter of precaution, the receiver's remuneration is finally settled and paid at the time of the close of the receivership, and, until that time, his full compensation ought not to be paid. But small sums may be, and

Remuneration when paid.

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chambers when the receiver passes his accounts; for, a receiver is not entitled to any remuneration until he has accounted for all his payments and receipts. (*Re Ward, Simmons v. Rose, Weeks v. Ward*, 1862, 31 Beav. 1.) Occasionally, however, the remuneration is fixed by the taxing master on taxation of costs, if the order for taxation so directs. *Silkstone and Haigh Moor Coal Co. v. Edey*, (1901) 2 Ch. 652, C.A.

(79) *Farmer's Loan & Trust Co. v. Central Railroad*, 8 Fed. 60. Where the remuneration of a receiver is paid by a commission on receipts, the *quantum* is sometimes reduced by allowing capital sums to be paid directly into Court instead of passing through the receiver's hands. *Ex parte Cranmer* (1808), 1 Russ. 477, n.; *Haigh v. Grattan*, (1839) 1 Beav. 201.

(80) *Grant v. Bryant*, 101 Mass. 567.

(81) *Howes v. Davies*, 4 Ab. Pr. 71. Thus, in a recent case the Calcutta High Court said:—"We confer on the Receiver such powers as are contained in O. XL, r. 1 (d) of the Code of Civil Procedure. We fix his remuneration at 10 per cent. on the gross collections, such percentage to cover all charges for collections, establishment and the receiver's remuneration but not the costs of actual litigation. Costs of this appeal must be costs in the case." Per Chitty and Teunon, JJ., in *Kumar Satya v. Srimati Rani*, 18 C.W.N. 537 at p. 539. A receiver of annual rents and profits or the receiver and manager of a business is generally paid by a commission on the gross amount of his receipts, the rate varying from about 2 to 5 per cent. in proportion to the care and trouble involved. (*Day v. Croft*, 1840, 2 Beav. 488.) In case of very large estates, the receiver's remuneration has been fixed as low as one per cent. on the value of the estate coming into his hands, provided that the remuneration does not amount to less than a particular sum. See *Lakshminarain Bogla*, Cal. High Court, 26th March, 1901. In other cases a fixed salary is allowed, which may or may not include an allowance for out-of-pocket expenses. (*Re Bignell, Bignell v. Chapman*, (1892) 1 Ch. 59, C.A.) A receiver of capital sums, as for instance, a receiver appointed to get in the personal estate of a deceased person, is often paid by a lump sum, the amount of which depends on the degree of difficulty experienced in getting in the property. *Potts v. Leighton*, (1898) 15 Ves. 273.

are generally, allowed from time to time before the close of the proceedings, without requiring him to wait until the determination of the receivership.<sup>82</sup>

Such allowances would however be less than the total worth of his services rendered up to that time, and it is only at the time of his discharge that his remuneration is finally settled and completely paid.<sup>83</sup>

As we have already seen, the receiver being appointed for the proper preservation and management of the property which is the subject of the litigation, it is but reasonable that such property should contribute in the first instance to the expenses of the receivership. The estate would be liable because the receiver is appointed for its benefit. Hence, it may be stated as a general rule that the receiver is entitled to the payment of his compensation out of the funds in his possession.<sup>84</sup>

The fact that such funds may be insufficient to pay other expenses of the administration and to meet the claims of the creditors is no ground why the receiver's compensation ought not to be paid out of such funds.<sup>85</sup> In fact the receiver's remuneration is considered as part of the "court costs," and are taxed and paid as such costs.<sup>86</sup>

It has been held that the fees of the receiver should be paid even in preference to existing liens.<sup>87</sup> In one case, it was suggested that if the fund in the possession of the receiver be not sufficient to pay his compensation, he would have no other remedy, unless the appointment was improper, when the charge may be made against the party on whose motion the appointment was made.<sup>88</sup> But the better and the more settled practice would appear to be to treat the

(82) *Special Bank Commissioners v. Franklin Institution*, 11 R.I. 557. Final compensation due to the receiver can be allowed only at the termination of the receivership. See *Maxwell v. Wilmington*, 82 Fed. 214.

(83) *Maxwell v. Wilmington*, 82 Fed. R. 214.

(84) *Preston, etc., Bank v. Smith, etc.*, 102 Mich. 462. See also *Premhall v. Sumbhoo-nath*, 22 C. 960. As between tenant for life and the remainderman, the remuneration of a receiver of income and the expenses of passing his accounts are chargeable against income and not capital. *Shore v. Shore*, (1859) 4 Drew. 501.

(85) *Filkins v. Adams*, 60 Ill. App. 410; *Gallagher v. Gingrich*, 105 Iowa, 237; 74 N. W.R. 763.

(86) *Espuella Land & Water Co., v. Bindle*, 11 Tex. Civ. App. 262; 32 S. W. R. 582; *McAulrow v. Martin*, 183 Ill 467; 56 N.E.R. 168.

(87) *Gallagher v. Gingrich*, 105 Iowa, 237; 74 N.W.R. 763.

(88) *Ephraim v. Pacific Bank*, 129 Cal. 589; 62 Pac. R. 177. (Amer).

receiver's compensation as a part of the expenses of the litigation, and to have the same taxed and paid as such.<sup>89</sup> Consequently if the trust estate be insufficient to pay the receiver's compensation, it should be charged against the losing party.<sup>90</sup>

This subject as to the funds from which the receiver is to be paid was recently discussed by an able writer in the *Harvard Law Review*, which was reproduced in the *Punjab Law Reporter* (1908), p. 78. The writer has comprehensively dealt with the subject, and we give below some extracts from the article. The writer says :—

Liability of the fund and parties to pay receiver's remuneration—Question examined.

“ It is within the discretion of the Court to appoint a receiver, to determine his compensation, and to fix the manner in which that compensation shall be paid. The Court through its receiver administers the estate for the benefit of those ultimately adjudged entitled to it. Receivership expenses, however, differ from ordinary costs in that the administration is supposed to be worth its cost to the true owner<sup>91</sup>; and accordingly the general rule is that the receivership expenses are to be taken from the fund administered.<sup>92</sup> The difficult problem is to determine when the facts justify such a departure from the general rule as to relieve the owner of the expenses of an involuntary management and place the burden on the party who instituted the proceedings. It may, indeed, be impossible to charge the fund because the possession of the receiver was never legal, as when his appointment was absolutely void because of a statute,<sup>93</sup> or when the property in question belongs to one not a party to the action.<sup>94</sup> In such case it is clear that the true owner cannot be forced to submit to a reduction of the fund to pay the expenses of the illegal administration. As the receiver is equally innocent, it seems equitable to charge the expenses to the person who caused the appointment of the receiver.<sup>95</sup> If, on the other hand, the appointment of the receiver under the circumstances was legal and proper, or, if erroneous, was acquiesced in by the defendant, the mere fact that the plaintiff eventually failed in his suit will not be enough to throw the expense on him.<sup>96</sup> If, however, the plaintiff was fraudulent, there can

(89) See *Alderson on Receivers*, 1905, p. 860. See also Note (86), *supra*.

(90) *Ibid.*

(91) See *Porter v. Sabin*, 149 U. S. 473, 479.

(92) *Jaffray v. Raab*, 72 Ia. 335.

(93) *Couper v. Shirley*, 75 Fed. 168.

(94) *Howe v. Jones*, 66 I.A. 156.

(95) *Ephriam v. Pacific Bank*, 129 Cal. 589. (American case).

(96) *Ferguson v. Dent*, 46 Fed. 88. But see *City of St. Louis v. St. Louis Gas Light Co.*, 11 M.O. App. 237.

be no objection to making him stand the cost.<sup>97</sup> A more difficult class of cases is where the appointment was not justified on the facts presented and was vacated on appeal. The Courts have reached all possible results on the liability for the receivership expenses incurred in the interim. It is submitted that the proper rule is first to protect the receiver by giving him a lien on the fund and then to let the defendant recover from the plaintiff any actual loss he may have suffered as a result of the receivership."<sup>98</sup>

A further question is presented when the funds prove insufficient to pay the receiver's expenses. Here, if the suit is not successful, as between the plaintiff and the receiver it seems equitable to make the plaintiff pay the expenses of the management of the property by the Court. But if the plaintiff's claim is sustained, it takes extraordinary circumstances to justify the charging him with the deficit. Thus, when by agreement certain money which would naturally have gone into the fund was paid directly to the plaintiff and the fund proved too small to cover the receivership expenses, the plaintiff was rightly called on to pay the balance.<sup>99</sup> But in the ordinary case the plaintiff should not be held, since the receiver is not the agent of the plaintiff but of the Court itself. Accordingly the Supreme Court of the United States recently held that a creditor who had a receiver appointed over a quasi-public corporation could not be charged with the expenses of managing the property.<sup>100</sup> To justify holding the plaintiff there must be special circumstances which change the equities of the situation, or the plaintiff must have *assumed liability* either by an agreement between the parties <sup>101</sup> or under terms required by the Court as a condition precedent to the appointment of the receiver.<sup>102</sup>

Where the fund in the Court is not sufficient to adequately compensate and indemnify a receiver, the parties at whose instance he was appointed should be required to provide the means of payment.<sup>103</sup>

It has been said that the final decree should settle what compensation the receiver is to have, how he shall be paid, whether out of the funds in his hands, or by one of the parties to the action. Ordinarily the

(97) *Highley v. Deane*, 168 Ill. 266.

(98) *Cutter v. Pollock*, 7 N. Dak. 631; *Mitter v. Brown*, 58 W. Va. 237, cited in P.L.R. (1908) p. 77, (Jour. portion).

(99) *Farmer's National Bank v. Backus*, 74 Minn. 264; Cf. *Welch v. Renshaw*, 14 Colo. App. 526.

(100) *Accord, Farmer's etc., Co. v. Oregon, etc. Co.*, 31 Ore. 237. But see Cf. *Tome v. King*, 64 Md. 166. See also *Atlantic Trust Co., v. Chapman*, 208 U.S. 360.

(101) *Kelsey v. Sargeant*, 2 N. Y. Sup. Rep. 669.

(102) *Harvard Law Review*, cited in P.L.R. (1908) at p. 78, (Jour. portion).

(103) *Tome v. King*, 64 Md. 166.



receiver should be protected by being permitted to look to the funds in his hands to save himself against loss; but sometimes he has been compelled to look for indemnity to the party at whose instance he was appointed.<sup>104</sup>

"As a general rule, where a receiver has been regularly appointed, his compensation is a charge upon the funds in his hands. But in this case all the funds that came to his hands were appropriated without satisfying his claim for compensation. So that it is a case where the receiver has no assets in his hands applicable to the payment of his charges. Of course, the receiver could not be retained merely to enable him to reduce such assets to possession for the purpose of paying his charges. That would be continuing the receiver for the benefit of the receiver, a thing never heard of. It has however been said that there might be some circumstances under which the Court would refuse to discharge a receiver until his compensation was paid."<sup>105</sup>

Where the receiver agreed to look only to the income of the estate for his remuneration.

Where, however, the receiver agreed to look only to the income of the property in his possession for his compensation, the Court would be justified in refusing to order payment from any other source.<sup>106</sup>

A receiver, though discharged by the dismissal of the suit in which he was appointed, is entitled to a lien on the estate for all his just claims and allowances. In the case of *Bertrand v. Davies*,<sup>107</sup> it is said:—"Where a receiver or manager is appointed by the Court in a suit properly constituted, such manager is to be considered as appointed on behalf of all persons interested in the property, and he is entitled to his ordinary commission and allowance and also to a lien on the estate, as against all persons interested in the property."<sup>108</sup>

On this principle it follows that the Court will not compel a receiver, who has been discharged, to make over the property in his possession, until his lien has been satisfied or provided for by a sufficient indemnity.<sup>109</sup>

(104) *Cutter v. Pollock* (N.D.) 59 N.W.R. 1062.

(105) *Joslin v. Athens Coach & Car Co.*, 43 Minn. 534; 46 N.W.R. 77. See also *Premiall Mullick v. Sumbhoonath Roy*, 22 C. 960 (973).

(106) *Ephriam v. Pacific Bank*, 136 Cal. 646; 69 Pac. R. 636.

(107) See the Judgment of the Master of the Rolls in 31 Beav. 429 at p. 436.

(108) On the same point the cases of *Fraser v. Burgess*, 13 Moo. P.C. 314 (346) and *Batten v. Wedgwood Coal and Iron Co.*, 28 Ch. Div. 317 (324), may be referred to.

(109) *Premiall Mullick v. Sumbhoonath Roy*, 22 C. 960 (973).

A receiver has got the right to retain the amount fixed as his compensation out of funds in his hands before surrendering the same to the trustee in bankruptcy.<sup>110</sup>

Similarly a receiver appointed in insolvency proceedings under the Civil Procedure Code is entitled to a lien for the amount of his commission on the net assets remaining after payment of the charges specified in Civil Procedure Code (1882), S. 356.<sup>111</sup>

It is doubtful if the rule that the receiver is entitled to a lien on the funds in his hands is a universal rule applicable to all cases without any exceptions. The opinion has been expressed in some cases that this rule would not apply to the case of an irregular appointment which is subsequently vacated.<sup>112</sup>

Exception to  
the above rule.

Thus, where an order appointing a receiver was vacated on the ground that the appointment was irregular and the receiver ordered to deliver up the assets in his hands, the Court said: "It is insisted by plaintiff's counsel that the compensation of the receiver should be paid out of the fund of which he had the custody and charge, and that he should be permitted to retain the same therefrom. Numerous cases have been cited to show that such is the uniform practice. Upon examination of these cases, it will be found that in every case there was no question made as to the legality or propriety of the appointment of the receiver, and that in each case the receiver closed up the business and settled his accounts in pursuance of his appointment. The receivership in each case was for the benefit of those interested in the fund, and he was paid therefrom, which is only another method of apportioning the costs upon those entitled to the fund. We think it would be an unjust and inequitable rule if in all cases the receiver should be entitled to his compensation out of the fund in his hands, without reference to the legality of his appointment. In view of all the facts and circumstances, we order that, in addition to the other costs and expenses allowed, including clerk-hire, rent, taxes, etc., to the receiver out of the fund, as shown by the report of the referee, the said fund be charged with one-third of the compensation herein allowed to the receiver, and that the other two-thirds be adjudged against the plaintiff."<sup>113</sup>

(110) *Mauran v. Crown C.L. Co.*, 23 R. I. 344. See also *Mahadeva v. Kuppusami*, 15 M. 233.

(111) *Mahadeva v. Kuppusami*, 15 M. 233.

(112) *French v. Gifford*, 31 Iowa. 148.

(113) *French v. Gifford*, 31 Iowa. 148. See *Hopfensack v. Hopfensack*, 61 How. Pr. 498.

Receiver's compensation entitled to priority over other liens on the property.

The compensation due to the receiver being regarded as part of the costs of the proceeding, it is proper to give it preference over prior liens.<sup>114</sup>

Hence it has been held that a receiver is entitled to be paid his remuneration, costs, and expenses out of the property, notwithstanding that it may be insufficient to meet all claims upon it. Such payment is postponed to the costs of realisation<sup>115</sup> and to any overriding charges outside the action, but takes priority over all other claims, including costs of action of the parties thereto.<sup>116</sup>

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(114) *Gallagher v. Gingrich*, 105 Iowa. 237. See Chap. XIV on "Receiver's Accounts."

(115) *Re Oriental Hotels Co., Perry v. Oriental Hotels Co.* (1871), L.R. 12 Eq. 126.

(116) *Re Johnson, ex parte Royle* (1875). L.R. 20 Eq. 780.

## CHAPTER XIV.

### RECEIVER'S ACCOUNTS.

Necessity for requiring receiver to submit accounts—Reason of the rule.

Receiver's liability to account, extent of.

Duties of receiver in the matter of accounting—General rule.

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(ii) English Law and Practice.

Duty of receiver to account although suit be not pending.

Duty of receiver with regard to property entrusted to his care.

Deposit of money in bank by receiver—Effect of Banker's failure.

Duty of receiver in the matter of rendering accounts—Impartiality.

Duty of receiver to place all facts truly and fully before the Court and to ask for directions of the Court.

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Manner of keeping accounts—Receiver should keep separate accounts of receiver-ship property.

Practice as to accounting.

Receiver to whom accountable—Only to the Court, not to party to suit, much less to strangers.

Duty of Court in passing accounts—Whether it is necessary for parties to raise specific objections to receiver's accounts.

Notice to parties.

Duty of Court to see that expenses incurred are in regard to the estate.

Consideration for the Court in the matter of passing receiver's accounts.

Procedure in the matter of examining accounts submitted by receiver—Directions given to lower Court by High Court when remanding a case.

Receiver to be charged with interest for money improperly kept in his hands.

What expenses will be allowed in receiver's accounts—General rule—Leave of the Court necessary before making the expenses.

Necessity for exceptions.

Exceptions.

(i) Expenses incurred for preservation of the estate.

(ii) Expenses incurred in an emergency.

(iii) Reasonable expenses in carrying on business.

(iv) Expenses incurred in payment of taxes and other lawful charges on the estate.

(v) Payment of insurance amount.

(vi) Small sums paid to assistants, clerks and watchmen, etc.

(vii) Money paid to agents.

(viii) Some other minor exceptions.